

United States

Circuit Court of Appeals

For the Ninth Circuit.

BUDGET FINANCE PLAN, INC., a Corporation,
Appellant,

VS.

JOHN O. ENGLAND, etc., Trustee of Estate of
Buddie Jerome Hayner, bankrupt,
Appellee.

Transcript of Record

**Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division**

FILED

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No.11856

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INDEX

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	PAGE
Appeal:	
Appellant's Statement of Points (DC) to Be Urged on.....	56
Certificate of Clerk to Transcript of Rec- ord on.....	63
Designation (DC) of Record on.....	59
Notice of.....	55
Statement of Points and Designation of Record on.....	99
Appellant's Statement of Points (DC) to Be Urged on Appeal.....	56
Appellee's Designation of Additional Portions of the Record on Appeal Under Rule 75(a).	61
Application and Order for Transmission of Exhibits Without Reproduction.....	100
Certificate and Report of Referee on Petition for Review of Referee's Order Denying Peti- tion for Reclamation on Behalf of Budget Finance Plan, Inc.....	17
Discussion by, and Opinion of, Referee....	34
Certificate of Clerk to Transcript of Record on Appeal	63
Designation (DC) of Record on Appeal.....	59
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	55

Order Approving Referee's Certificate on Petition for Review.....	54
Order Confirming Referee's Order.....	54
Order Denying Petition for Reclamation Filed Herein on Behalf of Budget Finance Plan, Incorporated	9
Order Extending Time to Docket.....	63
Order to Show Cause on Petition for Reclamation	6
Petition for Reclamation.....	2
Petition for Review of Referee's Order Denying Petition for Reclamation on Behalf of Budget Finance Plan, Inc.....	13
Petition in Reclamation.....	64
Witnesses for the Petitioner:	
Ahrens, Charles H.	
—direct	66, 81
—cross	84
Hayner, Buddie Jerome	
—direct	73
—cross	78
—redirect	80
Statement of Points on Appeal and a Designation of Record on Appeal.....	99
Trustee's Answer to Petition for Reclamation and Order to Show Cause.....	7

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In the Southern Division of the United States
District Court for the Northern District of
California

No. 36787-R

IN BANKRUPTCY

In the Matter of

BUDDIE JEROME HAYNER,

Bankrupt.

PETITION FOR RECLAMATION

To the Above-Entitled Court and to Burton J.
Wyman, Esq., Referee in Bankruptcy Thereof,
at San Francisco, California:

The petition of Budget Finance Plan, Incorporated, a corporation, respectfully represents:

1. That John O. England is the duly appointed and acting Trustee in Bankruptcy of the estate of the above-named Buddie Jerome Hayner, a bankrupt.

2. That said Trustee has in his possession the following described property, to-wit:

Multiplex--12" cutoff saw--40-A, Serial #40AA1386
12" Table Saw--Heavy duty--Derra James #683
1 Drill Press--Walker Turner, Serial #1944
1 Drum Sander--Max Universal--16 inch
1 1-H.P. Spray Compressor #120223--De Vilbiss
1 1/2-H.P. Spray Compressor #146894--De Vilbiss
1 Portable Hand Sander #681046--Skil Sander
1 Band saw--1/2 H.P.--Craftsman #677477

- 1 Joiner—Craftsman #10323320
- 1 1941 Ford Stake Truck, Motor No. IGT78581, Serial No. IGT78581, License No. EP8425, 6 cylinders;
- 1 1941 Chevrolet Stake Truck, Motor No. BV437667, Serial No. GYR05-7148, License No. P5594, 6 cylinders;
- 1 Buick 1946 4-door Sedan, Motor No. 45881335, Serial No. 24381039, License No. 44K730, 8 cylinders.

3. That on the 18th day of February, 1947, the said bankrupt, Buddie Jerome Hayner, also known as Jerry B. Hayner, executed a notice of his intention to mortgage the above-described personal property to Budget Finance Plan, Inc., a corporation, the petitioner herein, which notice recited that said mortgage would be delivered and the consideration thereof would be paid on February 26, 1947.

4. That a certain promissory note and chattel mortgage was made and executed by said bankrupt to your petitioner on February 18, 1947, and on February 26, 1947, said promissory note and chattel mortgage, copy of which is hereto attached, marked Exhibit "A," and made a part hereof, were delivered to your petitioner.

5. That on or about the 21st day of March, 1947, a certified copy of said chattel mortgage was registered and filed with the Division of Registration of the Department of Motor Vehicles, of the State of California, covering the aforesaid motor vehicles. That on the 14th day of June, 1947, said chattel mortgage was recorded in the Office of the County Recorder of the County of Alameda, State of California, and assigned Document No. AB51024.

6. That on February 26, 1947, the date said chattel mortgage was delivered to your petitioner, The Bank of Pinole of Crockett, California, was the legal owner of the aforesaid Ford truck; the Universal C. I. T. Credit Corporation of Oakland, California, was the legal owner of the said Chevrolet truck; the Bank of Berkeley of Berkeley, California, was the legal owner of said Buick automobile, and the bankrupt was the registered owner of all of said motor vehicles. That thereafter, upon demand of [2*] your petitioner and the payment by it of certain obligations owing by the bankrupt to each of said legal owners, the latter surrendered to your petitioner the ownership certificates of said motor vehicles and endorsed and released said legal ownership thereof to your petitioner.

7. That at the time of the filing of the petition in bankruptcy herein there had been paid on account of said promissory note held by your petitioner the sum of Two Hundred Twelve and 00/100 (\$212.00) Dollars on account of principal thereof, and the sum of Two Hundred Eighteen and 75/100 (\$218.75) Dollars on account of interest thereon, and there now remains due, owing and unpaid thereon the sum of Four Thousand, Seven Hundred Eighty-seven and 10/100 (\$4,787.10) Dollars, plus interest.

8. That by reason of the premises and the aforesaid facts your petitioner is entitled to immediate

*Page numbering appearing at foot of page of original certified Transcript of Record.

possession of all of said personal property hereinabove described.

9. That said property is of a value less than the amount owing thereon; that prior to the filing of this petition, your petitioner duly demanded from said Trustee surrender of said property but that said Trustee has refused and failed to surrender said property and ever since has refused and failed to surrender the same to your petitioner.

Wherefore, your petitioner prays for an order upon said Trustee requiring said Trustee to surrender said property to your petitioner and for such other and further relief as may be just in the premises.

BUDGET FINANCE PLAN,
INC.,

Petitioner,

By CHARLES H. AHRENS,

Vice-President of

Said Corporation.

STANLEY M. McLEOD,

CARROLL F. JACOBY,

Attorneys for Petitioner. [3]

State of California,

City and County of San Francisco—ss.

Charles H. Ahrens, being duly sworn, deposes and says:

That he is a Vice-President of Budget Finance Plan, Inc., a corporation, the petitioner herein, and that he is authorized to, and does hereby, make this affidavit for such petitioner.

That he has read the within and foregoing Petition for Reclamation, and knows the contents thereof, and that the same is true of his own knowledge.

CHARLES H. AHRENS,
Vice-President.

Subscribed and sworn to before me this 14th day of July, 1947.

[Seal] WM. E. SCHORD,
Notary Public in and for the City and County of
San Francisco, State of California. [4]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE ON PETITION
FOR RECLAMATION

Upon reading and filing the petition of Budget Finance Plan, Incorporated, a corporation, wherein said petitioner prays for an order requiring John O. England, Trustee in the above-entitled proceeding, to surrender to said petitioner certain personal property described in a chattel mortgage heretofore executed by the bankrupt herein to said Budget Finance Plan, Incorporated.

Now, upon motion of Stanley M. McLeod and Carroll F. Jacoby, attorneys for said petitioner.

It Is Hereby Ordered that the said John O. England, Trustee as aforesaid, be, and he is, hereby required to appear before the undersigned Burton J. Wyman, Esq., Referee in Bankruptcy, at the courtroom of said Referee, Room 609 Grant Building, Seventh and Market Streets, San Francisco,

California, on the 22nd day [6] of July, 1947, at 2 o'clock in the afternoon, to show cause, if any he has, why such order should not be granted.

It Is Further Ordered that service of said Petition and this Order upon the said Trustee, on or before July 16, 1947, shall be sufficient notice of the hearing on said petition.

Dated: July 15, 1947.

/s/ BURTON J. WYMAN,
Referee in Bankruptcy.

[Endorsed]: Filed with Referee July 15, 1947.

[Endorsed]: Filed with Clerk Oct. 27, 1947. [7]

[Title of District Court and Cause.]

TRUSTEE'S ANSWER TO PETITION FOR
RECLAMATION AND ORDER TO SHOW
CAUSE

Now comes John O. England, the duly appointed and acting trustee of the estate of the above named bankrupt and answering the Petition for Reclamation filed herein by Budget Finance Plan, Incorporated, a corporation, admits, denies and alleges:

Trustee admits the allegations contained in paragraphs 1, 2 of said petition for reclamation.

Answering the allegations contained in paragraphs 3, 4, 5, 6, 7, 8 and 9 of said Petition for Reclamation, Trustee alleges that he has no information or belief sufficient to enable [8] him to answer the allegations in said paragraphs contained

and placing his denial on that ground, denies each and every, all and singular, generally and specifically the allegations in said paragraphs contained.

As and for a Second, Separate and Distinct Defense to Said Petition for Reclamation, Trustee Alleges:

That the chattel mortgage as alleged in said Petition for Reclamation is invalid as against the Trustee for the reason that it was not recorded as required by law.

Wherefore, the Trustee prays that the prayer in said Petition for Reclamation be denied; that the order to show cause issued thereon be discharged; that said petition be hence dismissed with costs in favor of said Trustee, and for such other or further order and relief as may be meet and proper in the premises.

JOHN O. ENGLAND,
Trustee.

MAX H. MARGOLIS,
Attorney for Trustee.

United States of America,
Northern District of California,
City and County of San Francisco—ss.

John O. England, being first duly sworn, deposes and says:

That he is the person named and described in the foregoing Trustee's Answer to Petition for Reclamation and Order to Show Cause; that he has read the Answer, knows the contents thereof and hereby makes solemn oath that the statements con-

tained therein are true to the best of his knowledge, information and belief.

JOHN O. ENGLAND,

Subscribed and Sworn to before me this 16th day of July, 1947.

[Seal]

LOUIS WIENER,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed with Referee July 17, 1947.

[Endorsed]: Filed with Clerk Oct. 27, 1947. [9]

[Title of District Court and Cause.]

ORDER DENYING PETITION FOR RECLAMATION FILED HEREIN ON BEHALF OF BUDGET FINANCE PLAN, INCORPORATED

This matter comes before the court on a Petition in Reclamation filed herein on July 15, 1947, by Stanley M. McLeod, Esq., and Carroll F. Jacoby, Esq., on behalf of Budget Finance Plan, Incorporated, a corporation; upon the order to show cause based upon said Petition in Reclamation; upon the Answer to said Petition in Reclamation, filed herein by Max H. Margolis, Esq., on behalf of John O. England, the trustee of the above named bankrupt's estate; upon the record herein, including the evidence offered and received relative to said petition, Order to Show Cause and Answer, at the time of the hearing held before the undersigned referee on July 22, 1947.

The matter having been submitted on briefs, and said briefs having been placed before the court, and the court, having considered said briefs in connection with the aforesaid evidence and the record herein, and now being advised fully in the premises, finds that:

1. The chattel mortgage, upon which said claimant, Budget Finance Plan, Incorporated, a corporation, bases its claim for reclamation, was executed by the above-named bankrupt, in the County of Alameda, State of California, on February 18, 1947;
2. The chattel mortgage, executed as aforesaid, was not offered for registration with the Division of Registration of the Department of Motor Vehicles of the State of California, until March 21, 1947; [10]
3. The chattel mortgage, executed as aforesaid, was not recorded in the County of Alameda, State of California, until June 14, 1947;
4. Taking into consideration all the facts and circumstances shown by the record, and particularly insofar as the time elapsing between the date of the execution of said chattel mortgage and the registering thereof with the Department of Motor Vehicles is concerned, said chattel mortgage was not offered for registration with the Division of Registration of the Department of Motor Vehicles of the State of California within a reasonable time after its execution and was, and now is, void

as against all creditors who became such prior to the date upon which said chattel mortgage was offered for registration;

5. The chattel mortgage; as against all creditors who became such prior to the date upon which said chattel mortgage was offered for registration with the Division of Registration of the Department of Motor Vehicles of the State of California, was, at the time of the filing of the petition in bankruptcy herein, and now is, invalid;
6. There are numerous creditors of the bankrupt who became such creditors prior to the date upon which said chattel mortgage was offered for registration with the Division of Registration of the Department of Motor Vehicles of the State of California.

Based upon the record herein, including the evidence offered and received upon the hearing of said Petition for Reclamation and the Findings of Fact hereinbefore set forth, the court concludes as matters of law that:

1. The failure and neglect of the mortgagee, Budget Finance Plan, Incorporated, or any one on its behalf, to offer said chattel mortgage for registration with the Division of [11] Registration of the Department of Motor Vehicles of the State of California until more than thirty days after the date of the execution of said chattel mortgage was an unreasonable delay and that, as a consequence of said unreasonable delay said chattel mortgage be-

came, and now is, void as against all creditors of the bankrupt who became creditors of said bankrupt prior to the date said chattel mortgage was offered for registration with the Division of Registration of the Department of Motor Vehicles of the State of California and that said Petition for Reclamation should be denied and the Order to Show Cause based thereon discharged, and

2. Because counsel for the mortgagee stated in open court that the delay in recording said chattel mortgage in Alameda County, State of California, until June 14, 1947, was an unreasonable delay after the date of the execution thereof, the effect of said last mentioned delay has become, and now is, moot.

It Hereby Is Ordered that the Petition for Reclamation filed herein by and/or in behalf of Budget Finance Plan, Incorporated, be, and it is Denied, and the Order to Show Cause be, and it is, Discharged, all without prejudice, however, to said Budget Finance Plan, Incorporated, to file an unsecured claim herein, in such amount as it may be advised.

Dated: July 31, 1947.

BURTON J. WYMAN,
Referee in Bankruptcy.

[Endorsed]: Filed July 31, 1947. Burton J. Wyman, Trustee in Bankruptcy.

[Endorsed]: Filed October 27, 1947. [12]

[Title of District Court and Cause.]

PETITION FOR REVIEW OF REFEREE'S
ORDER DENYING PETITION FOR RECLAMATION ON BEHALF OF BUDGET
FINANCE PLAN, INC.

To Burton J. Wyman, Esq., Referee in Bankruptcy:

The petition of Budget Finance Plan, Inc., a corporation, respectfully represents and shows:

1. That your petitioner is a creditor of Buddie Jerome Hayner, bankrupt herein, and claims as security a chattel mortgage on certain motor vehicles and equipment.

2. That heretofore, on the 15th day of July, 1947, petitioner filed its Petition for Reclamation, verified July 14, 1947, to recover possession of said motor vehicles and equipment from the Trustee herein, and an Order to Show Cause was duly issued thereon.

3. That thereafter, on July 22nd, 1947, the said matter came on regularly for hearing on the said Petition for Reclamation, Order to Show Cause, and Answer of Trustee.

4. That thereafter and on the 31st day of July, 1947, the said Referee did make Findings of Fact, Opinion, Conclusions of Law, and an Order thereon; that the said Order is as follows:

It Is Hereby Ordered that the Petition for Reclamation filed herein by and/or in behalf

of Budget Finance Plan, Incorporated, be, and it is, Denied, and the Order to Show Cause be, and it is, Discharged, all without prejudice, however, to said Budget Finance Plan, Incorporated, to file an unsecured claim herein, in such amount as it may be advised.

Dated: July 31, 1947.

BURTON J. WYMAN,
Referee in Bankruptcy.

5. The said Order is erroneous for the following reasons: [13]

- a. That the said Order and the opinion supporting it are against law.
- b. That the Findings of Fact and Conclusions of Law upon which said order is based are not supported by and are inconsistent with the evidence herein.
- c. That the Findings of Fact do not support and are inconsistent with the Opinion, Conclusions of Law and Order herein.
- d. That the said Order does not follow the rule laid down by the Court in *In Re Mercury Engineering, Inc.*, 68 Fed. Sup. 376 (D.C., S.D., Calif., Central Div.).
- e. That the Findings of Fact fail to find on a material issue, in this, that the evidence shows without contradiction that the delay in filing the chattel mortgage with the Department of Motor Vehicles, if any, was due to the failure

of the said Department of Motor Vehicles to issue certificates of registration, and through no fault of petitioner.

- f. That the Findings of Fact fail to find on a material issue, in this, that the evidence shows without contradiction that the transfer of legal ownership in said motor vehicles occurred between Universal CIT Corporation, Bank of Berkeley, and Bank of Pinole, the then legal owners, and petitioner, and not from the bankrupt; that there was therefore no transfer of interest in the motor vehicles from bankrupt to petitioner except the excess, if any, over the interests of said transferees in the total sum of \$4,024.30.
- g. That the Findings of Fact fail to find on a material issue, in this, that the evidence shows without contradiction that the total value of said motor vehicles is the sum of \$4,000.00, and that the unpaid balance due petitioner is in excess of \$4,700.00.
- h. That Findings of Fact 4, and Conclusions of Law 1, insofar as they find or hold that the delay, if any, was unreasonable and that therefore the chattel mortgage is void [14] are contrary to the law and the evidence, and that the record shows that the delay in registering the said chattel mortgage with the Department of Motor Vehicles, if any, was a reasonable one.

Wherefore, your petitioner prays for a review of said Order by the Judge, and that the said Order be vacated and set aside.

Dated: August 9, 1947.

BUDGET FINANCE PLAN, INC.

Petitioner,

By C. H. AHRENS,

Vice-President of Said Corporation.

STANLEY M. McLEOD,

CARROLL F. JACOBY,

Attorneys for Petitioner.

State of California,

City and County of San Francisco—ss.

C. H. Ahrens, being duly sworn, deposes and says:

That he is a Vice President of Budget Finance Plan, Inc., a corporation, the petitioner herein, and that he is authorized to, and does hereby make this affidavit for said petitioner.

That he has read the within and foregoing petition for review and knows the contents thereof; that the same is true of his own knowledge.

C. H. AHRENS.

Subscribed and sworn to before me this 9th day of August, 1947.

[Seal]

THOMAS J. BEGLEY,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed August 9, 1947. Burton J. Wyman, Referee in Bankruptcy.

[Endorsed]: Filed October 27, 1947. [16]

In the Southern Division of the United States
District Court for the Northern District of
California

No. 36787-R

IN BANKRUPTCY

In the Matter of

BUDDIE JEROME HAYNER, also known as
Jerry B. Hayner,

Bankrupt.

CERTIFICATE AND REPORT OF REFEREE
ON PETITION FOR REVIEW OF REF-
EREE'S ORDER DENYING PETITION
FOR RECLAMATION ON BEHALF OF
BUDGET FINANCE PLAN, INCORPO-
RATED

To Honorable Michael J. Roche, United States
District Judge for the Northern District of
California:

I, Burton J. Wyman, one of the referees in
bankruptcy of this court and the referee in charge
of the above-entitled bankruptcy proceeding, cer-
tify and report as follows:

On July 15, 1947, Budget Finance Plan, Incor-
porated, filed its Petition in Reclamation herein
whereby it sought to reclaim from John O. England,
as the trustee in bankruptcy of the estate of the

above named bankrupt, the personal properties described in said petition as follows: [17]

- “Multiplex—12” cutoff saw—40-A. Serial #40AA1386
- 12” Table Saw—Heavy duty—Derra James #683
- 1 Drill Press—Walker Turner, Serial #1944
- 1 Drum Sander—Max Universal—16 inch
- 1 1-H.P. Spray Compressor #120223—De Vilbiss
- 1 ½-H.P. Spray Compressor #146894—De Vilbiss
- 1 Portable Hand Sander #681046—Skil Sander
- 1 Band saw—½ H.P.—Craftsman #677477
- 1 Joiner—Craftsman #10323320
- 1 1941 Ford Stake Truck, Motor No. IGT78581, Serial No. IGT78581, License No. EP8425, 6 cylinders;
- 1 1941 Chevrolet Stake Truck, Motor No. BV437667, Serial No. GYR05-7148, License No. P5594, 6 cylinders;
- 1 Buick 1946 4-door Sedan, Motor No. 45881335, Serial No. 24381039, License No. 44K730, 8 cylinders.”

In addition to setting out the aforesaid descriptions of the properties sought to be reclaimed, the Petition in Reclamation also averred, in substance, that on February 18, 1947, said bankrupt executed a notice of said bankrupt’s intention to mortgage the above described personal properties to said Petitioner in Reclamation and that said notice stated that said mortgage would be delivered and the consideration therefor would be paid on February 26, 1947; that a certain promissory note and chattel mortgage was made and executed by said bankrupt to said Budget Finance Plan, Incorporated, on February 18, 1947, and on February 26, 1947, said promissory note and chattel mortgage were delivered to said petitioner in reclamation; that on March 21, 1947, a certified copy of said

chattel mortgage, covering the aforesaid motor vehicles, was filed with the Division of Registration of the Department of Motor Vehicles of the State of California, and on June 14, 1947, said chattel mortgage was recorded in the office of the Recorder of the County of Alameda, State of California; that on February 26, 1947, the date upon which said chattel mortgage was delivered to said petitioner in reclamation, The Bank of Pinole, of Crockett, California, was the legal owner of the aforesaid Ford truck; Universal C.I.T. Credit Corporation of Oakland, California, was the legal owner of said Chevrolet truck; Bank of Berkeley, Berkeley, California, was the legal owner of the Buick automobile, and the bankrupt was the registered owner of all said motor vehicles; that thereafter, upon demand of said petitioner in reclamation and the payment of the obligations owing by the bankrupt to each of said [18] legal owners, said legal owners surrendered to said petitioner in reclamation the ownership certificates of said motor vehicles and endorsed and released the ownership of said motor vehicles to said petitioner in reclamation; that at the time of the filing of the petition in bankruptcy, in the above entitled matter, there had been paid on account of said promissory note, held by said petitioner in reclamation, the sum of \$212.00, on account of principal, and the sum of \$218.75, on account of interest, and that there remained due, owing and unpaid, the sum of \$4,787.10, plus interest, as of the date of said petition in

reclamation; that the petitioner of reclamation is entitled to the immediate possession of all said personal properties described above; that said properties are of a value less than the amount owing thereon; that prior to the filing of the petition in reclamation, the petitioner therein demanded from the trustee in bankruptcy the surrender of said properties, but that said trustee had refused and failed to surrender said properties ever since said demand.

The petition in reclamation ends with the prayer, in substance, that an order be made requiring the trustee to surrender said properties to said petitioner in reclamation and that said petition in reclamation be granted such other and further relief as may be just in the premises.

On July 17, 1947, and in response to the Order to Show Cause, based upon said petition in reclamation, John O. England, as said trustee in bankruptcy, filed herein an answer to said petition in reclamation.

In substance, the Answer admitted, and admits, that John O. England is the appointed and acting trustee in bankruptcy of the estate of the above named bankrupt and that said trustee has in his possession the above described personal properties.

As to the other allegations contained in said petition in reclamation, i.e., those dealing with the executions and deliveries of the aforesaid promissory note and chattel mortgage; the registering and recording of said chattel mortgage, the legal ownership of the motor vehicles, the payments of the

obligations by the petitioner in [19] reclamation, the surrender of the certificates of ownership of said motor vehicles; the release of said legal ownerships to said petitioner in reclamation; the amounts owing and unpaid; the claim for the possession and the alleged shortage of value of said motor vehicles; the demand of the Petition for Reclamation for the surrender of said properties, said trustee, basing his denials on lack of information or belief sufficient to enable him to answer said last mentioned allegations, denied all of them, both general and specifically.

By way of a second, separate and distinct defense to said petition in reclamation, said trustee averred, in substance, that the chattel mortgage is invalid as against said trustee, for the reason that it was not recorded as required by law.

The Answer concludes with the prayer, in substance, that the petition in reclamation be dismissed, with costs in favor of the trustee, the Order to Show Cause discharged, and that said trustee have such other or further order and relief as may be meet and proper in the premises.

Among other things which the chattel mortgage, in substance provides, are that the 20th Century Fixture Co., by Jerry B. Hayner, mortgages to Budget Finance Plan, Incorporated, the hereinbefore described personal properties; that the entire balance might be declared due and payable forthwith; that the mortgagee, or assigns, without previous notice or demand, might, at its option, take

possession of said properties, according to law; that if, upon a sale of such properties, insufficient funds should be realized to pay the obligations secured by said chattel mortgage, the mortgagor would pay the deficiency on demand.

Contained in said chattel mortgage, and as a part thereof, is a promissory note reading as follows: [20]

“\$5000.00 Oakland, California, Feb. 18, 1947

“For Value Received, on or before July 17, 1948, the undersigned jointly and severally promise to pay to the order of Budget Finance Plan (License No. 81645LA) at its office in Oakland, California, in lawful money of the United States, the sum of Five Thousand and no/100 Dollars, payable in eighteen successive monthly installments of \$335.90 each, which includes charges at the rate of 2% per month on that part of the unpaid principal balance of said loan not in excess of \$100.00 and 2% per month on any remainder, the first of which installments shall be payable on the 26th day of March, 1947, and a final installment covering any unpaid balance including charges as afore-said due and owing on the due date above mentioned. Payments shall be deemed made only when received by payee. The word ‘charges’ shall be deemed to include interest at 10% per annum.

“Default in the payment of all or any part of the amount owing hereon at any time or

times, shall at the option of the holder, render the entire principal balance and accrued charges immediately due and payable. Extension of time of payment shall not waive future strict performance, nor shall it affect the liability of any party hereto or surety, guarantor or endorser, all of whom severally waive demand presentment, notice of non-payment, notice of protest and protest. All or any part of the principal sum of this note may be paid at any time together with charges to date thereof. All payments received shall be credited first to charges to date and the balance to principal."

When on July 22, 1947, said petition in reclamation, said Order to Show Cause and said Answer to said petition in reclamation came on for hearing before me, as the referee in bankruptcy in charge of the above-entitled bankruptcy proceeding, the following, in substance, occurred:

Stanley McLeod, Esq., representing said petitioner in reclamation, immediately stated that, inasmuch as the chattel mortgage involved had been executed on February 18, 1947, the recorded notice of intention to mortgage having fixed February 26, 1947, as the consummation date, and the chattel mortgage had not been recorded in the office of the Alameda County Recorder until June 14, 1947, he would concede, on the part of said petitioner in reclamation, that said chattel mortgage was void, as against creditors, insofar as all personal properties, except the motor vehicles, are concerned.

Thereupon, Charles H. Ahrens, vice president of Budget Finance Plan, Incorporated, the petitioner in reclamation herein, was called as a witness for said petitioner.

In substance, said witness testified: [21]

That he was familiar with a transaction between petitioner in reclamation and the bankrupt; that the Oakland office of the organization advanced a loan to the bankrupt under date of February 18, 1947, in the amount of \$5,000.00, the purpose of which was to pay off three separate loans on the vehicles bankrupt owned at that particular time; that at that time one of the vehicles was encumbered by the Bank of Pinole in the amount of \$807.10; on another, the bankrupt was obligated to the Universal C.I.T. in the amount of \$929; on a 1946 Buick, to the Bank of Berkeley in the sum of \$2,288.20; that there was a total lien against these three vehicles of \$4,024.30; that bankrupt applied for a refinancing of the indebtedness plus an additional amount of cash for use in his business; that bankrupt offered as security for the loan, the three vehicles and what personal property in the nature of equipment and machinery bankrupt had in the 20th Century Fixture Company, of which I understood bankrupt was the sole owner;

That the petitioner in reclamation received the pink certificates of ownership of the vehicles from the respective places that were paid off,—The Bank of Pinole, the Universal C.I.T. and the Bank of Berkeley; that the petitioner in reclamation did not obtain the white certificates for a considerable

time after the completion of the loan, because the white certificates at the time the loan was made, were in transit to Sacramento; that that was during the month of February; that they were in transit to Sacramento for the 1947 licenses and had not been returned from Sacramento; that they are used as a receipt for application for the current year license. (At this point the witness, Ahrens, was withdrawn from the stand.)

Buddie Jerome Hayner, the bankrupt, then was called as a witness for said petitioner.

In substance, said witness testified:

That he had a business transaction with the Budget Finance Plan, Incorporated; that that transaction was in regards to a loan; [22] that the witness went to the Budget Finance Company and asked it to loan the witness a sum of money, which it did, for improvements of the witness' business; that the witness identified as his signature, the name signed to a document entitled "Statement of Loan"—"Budget Finance Plan"; (The last-mentioned document was thereupon offered and received in evidence as claimant's Exhibit No. 1.)

That, on being shown a duplicate chattel mortgage and promissory note dated February 18, 1947, said witness testified that the name thereon was a copy of his signature and that the duplicate document was executed at the time that the original chattel mortgage and promissory note were executed. (Thereupon the last-mentioned document was received in evidence as claimant's Exhibit No. 2.)

That at the time of the execution of the chattel mortgage and promissory note, said witness received the sum of \$900.00 and some odd; that the difference between the \$900.00 and \$5,000.00 was money paid off on debts of the witness on two trucks and one automobile and a personal loan; that the signatures on three documents entitled, "Authorization for Pay-Off" dated February 18, 1947, were those of the witness; that said authorizations to pay off indicated that the one addressed to the Bank of Berkeley, Berkeley, California, directed them to accept from the Budget Plan Company \$2,288.20, being the balance due on the accounts of the witness to the bank on a 1946 Buick; that a second one to the Universal C.I.T. Credit Corporation, 1440 Broadway, directed them also to accept from the Budget Finance Plan, \$929.00, on a 1941 Ford truck; that the final one to the Bank of Pinole at Crockett, California, directed it to accept from the Budget Finance Plan the sum of \$807.10 due on a 1941 Ford. (Thereupon the three last-mentioned documents were received in evidence as claimant's Exhibit No. 3.)

That the Bank of Pinole advanced the cash in the sum of \$550.00 to the witness for payroll; that it had no security outside of the witness' note and the automobile and trucks were with the Standard Finance, one-third down was required by law and the witness financed the rest; that the witness did not hold the pink slips on these [23] vehicles; that at that time, the witness assumed that the banks

did; that they were holding them as security for these indebtednesses; that the witness never had been the legal owner of any of these vehicles; that the witness was the registered owner; that in February, at the time the witness executed the chattel mortgage and promissory note, said witness did not have the white registration slips; that they were in transit to the Motor Vehicle Department; that the witness believed that he had turned them in when he made application for license plates; that the witness then was not able to give the white slips to the Budget Finance Plan; that the witness made one payment, one full payment, to the Budget Finance Plan on this mortgage and note and made another payment on the interest, because he could not meet the second payment; that the witness paid the interest that month on the amount of the note; that the two sums totaled \$300.00, some on one, on the regular payment for the note, which there is a record of; that on the other, the witness paid \$92.00, \$98.00, something like that;

On cross-examination the witness testified, in substance:

That the witness did not execute any documents, down in the office of the Budget Finance Company when he made the loan, except the three exhibits just shown him, but that he was called back approximately two months later, after the Budget Finance Company had received the white slips, to sign the white slips so that they could be sent down with

the pink slips, so the Budget Finance Company could register the cars as legal owner; that the white slips came to the witness; that he took them and showed them to the Budget Finance Company; that they still had the pink slips; that they had not sent the pink slips up yet, or something; that the witness didn't know what the mix-up was; that the witness signed the white slips then and turned them over to Mr. Burnett of the Budget Finance Company; that he, in turn, sent them along with the pink slips to register it as legal owner. [24]

That the Ford truck was kept on the premises and Mr. Green might have used the Chevrolet to and from home; that after the day's work, the Ford was stored there with the rest of these miscellaneous items, usually, once in a while it was used.

On re-direct examination, the witness, in substance, testified:

That he got the white slips back from Sacramento and sent them over to the Budget Finance Company; that the witness did not recall when he got them back from Sacramento; that he did know it was after the time the loan was negotiated; that he didn't remember how long after, but it was some time; that the witness thought it was around a month, a month and a half, possibly two months; that after he received the pink slips, the witness thought it was two or three days until he got around taking them to the Budget Finance. then he went in and took care of it.

Recalled on behalf of the reclamation petitioner, Charles H. Ahrens testified, in substance:

That he had seen a letter from the Division of Registration, Department of Motor Vehicles, Sacramento, California, dated April 17, 1947, addressed to Budget Finance Plan, 419 14th Street, Oakland, California; that the witness obtained it from the files the office carries on that account; that it is a part of the file relating to the bankrupt's loan; that the witness did not know specifically when it was received by his company; that he knew it was dated April 17, and mailed from Sacramento on April 17, addressed to the Budget Finance Plan in Oakland, so it was some time after April 17; usually it takes one day to come from Sacramento to Oakland. (This letter was thereupon introduced in evidence as claimant's Exhibit No. 4.)

That the bankrupt at the present time is indebted to the witness' company; that the witness did not have the exact figure; that the witness furnished counsel (McLeod) with the figures; that the [25] principal sum of \$4,787.10 with interest due from April 26, 1947, that is, \$4,787.10 plus interest from April 26, this year; that the witness was reasonably familiar with the re-sale value of used automobiles, with the type and make of automobiles set forth in the chattel mortgage; that the witness was aware there are involved a 1941 Stake Truck and a 1941 Chevrolet Stake Truck and a 1946 Buick, four-door sedan; that it was the opinion of the witness that the market value of the 1941 Ford Stake Truck was in the neighborhood of \$800.00 or \$900.00; that

it was the opinion of the witness that the 1946 Buick automobile was of the value of between \$2000.00 and \$2,200.00.

On cross-examination the last-named witness testified, in substance:

That he last had seen the 1941 Ford Stake truck about 12 o'clock on the day he testified; that it was located on Harrison near 16th in Oakland; that it happened to be in a parking lot where the witness had parked his car; that the witness did not examine it with any particularity; that it is the occupation of the witness to make loans on motor vehicles in California; that it has been for a period of some seventeen or eighteen years; that naturally, he would be familiar with the market values of all motor vehicles as used as security and the biggest percent of all business that the Budget Finance Plan does, does in the State of California; that the witness did not turn the motor over that day; that so far as the witness could recall the last time he saw it in operation was June 28th; that on June 28th or 29th, it was brought in from the place that the bankrupt apparently had left it or moved to out at Walnut Creek; that the witness had not seen the 1941 Chevrolet Truck; that the witness took his estimated value of \$800.00 or \$900.00 from the experienced opinion of the personnel of his San Francisco office; that the witness had no independent knowledge of his own by way of observation; that the witness could not swear whether it was newly or freshly painted, whether there was a new

motor in it, or not; that the witness [26] did not personally see the 1946 Buick Sedan; that the price of \$2,000.00 or \$2,400.00* was taken from the opinion of the personnel the witness has in the San Francisco office who had seen it; that it was not his own opinion; that the witness did not know whether it was freshly painted; that the witness thought that it would make a difference in the price of the car if it were freshly painted, a motor clean-up; in those two instances the basis for the figure that the witness gave the court was from outside information, not his own; that as to whether or not there was any correspondence had with Sacramento which antedated claimant's No. 4, there is a carbon copy of an advice to the Department of Motor Vehicles at Sacramento, that we had attached a certified copy of the chattel mortgage and the titles to such chattel mortgage to the Motor Vehicle Department along with the necessary fees which the witness believed they acknowledged; that the copy of that letter is in the Oakland office; that the date of this transaction was March 21; that the letter of transmittal is dated March 21, 1947, and covers the transaction with which we are here concerned; that the reason for waiting from February 18th to March 21st before sending the transmittal with the necessary papers to Sacramento was because Mr. Hayner did not have the

*The previous testimony of the witness was that the value of said automobile was \$2,000.00 or \$2,200.00.

registration slips and in order to complete the due filing with the Department of Motor Vehicles, they require that you have accompanying the chattels, the ownership certificates and also the registration certificates before they will complete the recordation of it; that the witness did not know what date the petitioner had the pink slips; that they merely made the transaction on February 18, 1947; drew up the contract and mailed, presumably the checks to these respective companies, attached to an original of these authorizations, requesting them to accept the money and send us titles to the vehicles; that the witness did not know when the titles to the vehicles were received from the Pinole Bank, the Berkeley Bank and the Universal C.I.T. Credit Corporation; that the witness did not think that his file would show it; that the cancelled checks going to those three [27] parties would tell what time the bank honored the checks, that is all; that the witness had no means of knowing what the actual date the office received these particular certificates; that the witness doubted very much whether there would be anything in the files to indicate what date they were received; that they have no reason to make a record as to when they receive certificates from a company; that they would pay a loan off, make records, of various natures, not of that; that they didn't affix any file stamp to the letter of transmittal; that they did with the check-off when received from the Department of Motor Vehicles, not from anyone else; that the

witness didn't know whether there were any letters accompanying the pink ownership certificates from the three parties to whom they made the pay-offs; that there was a notice of intention to mortgage this property executed by the petitioner; that oft-times we wait before we sent the pink ownership certificates to Sacramento, especially do we do that in the months of February and March; that it is necessary in the State of California that a motor vehicle registrant send in, the witness thought, the first Monday of February, somewhere around the 5th or 6th, he must send in an application for the current year's tax by that date or be fined a substantial figure; that in making loans during that period of time, why, it is common practice to complete them when we obtain the ownership certificate and await the disposition of the Department of Motor Vehicles in Sacramento to send back the current registration before we go through the mechanics of sending up a chattel mortgage and title, because of the fact that it just duplicates the work; that we have to do the same thing all the time; that in other words, we also wait for the registration certificates, the usual practice in an office—we all have a way of doing business—in our office, the practice is that every week or ten day periods; that, the witness assumed, that are completed, that accumulate between the week or ten days periods; that, the witness assumed, was the condition that prevailed with respect to this transaction. [28]

DISCUSSION BY, AND OPINION OF, REFEREE

At the conclusion of the hearing, the matter was submitted on briefs, and, in due time, briefs were filed by counsel for the respective interested parties.

In the brief filed on behalf of the reclamation petitioner, under the heading, “The Facts” counsel for said petitioner states:

“Shortly after February 18, 1947, the exact date being unknown, the certificates of ownership were delivered by the aforesaid security holders to petitioner * * *”

Having in mind the foregoing statement, I considered it necessary, before making any order, to satisfy myself just what provisions of the law were necessary to be complied with in order to place the petitioner in a position to have its petition granted, in the event the facts were such as to permit the making of such an order. To that end, I examined the Vehicle Code of the State of California. The first applicable provision of the law which came to my attention was section 195 of said code. It reads:

“No chattel mortgage on any vehicle registered hereunder irrespective of whether such registration was affected prior or subsequent to the execution of such mortgage, is valid as against creditors or subsequent purchasers or encumbrancers until the mortgagee or his successor or assignee has deposited with the de-

partment, at its office in Sacramento, a copy of said mortgage with an attached certificate of a notary public stating that the same is a true and correct copy of the original, accompanied by a properly endorsed certificate of ownership to the vehicle described in said mortgage, if said vehicle is then registered hereunder, or if such vehicle is not so registered, by an application in usual form for an original registration, together with an application for [29] registration as legal owner, and upon payment of the fees provided in this code.” (Underlining referee’s.)

The next provision of said code which then appeared to me to have a bearing on whether or not the petitioner in reclamation was entitled to have its petition granted, is section 196, which states:

“When the chattel mortgagee, his successor or assignee, has deposited with the department a copy of the chattel mortgage as provided in section 195 thereof, such deposit constitutes constructive notice of said mortgage and its contents to creditors and subsequent purchasers and encumbrances * * *” (Underlining referee’s.)

Shorn of as much of the legal verbiage as, in my opinion, seems proper, and stated in ordinary language, all (with one exception), from the standpoint of the compliance with applicable statutory law, that the petitioner in reclamation needed to

have done to have placed it in a position wherein its actions would not have been subject to successful attack by creditors of the bankrupt was:

1. To have deposited with the Department of Motor Vehicles of the State of California, at its office in Sacramento,
 - (a) A copy of the chattel mortgage in controversy with an attached certificate of a notary public stating that said copy of chattel mortgage was a true and correct copy of the original, and
 - (b) The properly endorsed certificates of ownership to the vehicles described in the mortgage in controversy.

Had the thus laid-down procedure been followed, within a reasonable¹ time after the execution of said chattel mortgage by the bankrupt, the creditors of said bankrupt would have been without legal grounds upon which to base their opposition to the petition in reclamation. [30]

Inasmuch as the only documents with which the court was concerned in determining whether or not the petitioner in reclamation or the creditors should prevail in the controversy were the copy of the chattel mortgage and the certificates of ownership of the motor vehicles involved, I found the following questions propounded to the witness (Ahrens),

¹The deposit of the last mentioned documents within a reasonable time being the exception referred to above.

the representative of the reclamation petitioner, and the following answers given by such witness, more than interesting:

“Q. (By Counsel for Petitioner, McLeod): Mr. Ahrens, as far as the motor vehicles were concerned, did you obtain from anyone, the pink certificates of ownership² of the vehicles?

2“‘The department upon registering a vehicle shall issue a certificate of ownership to the legal owner (1) and a registration card (3) to the owner (2) or both to the owner if there is no legal owner of the vehicle.’” Calif. Vehicle Code, Sec. 151.

[(1) “‘Legal owner’ is a person holding the legal title to a vehicle under a conditional sale contract, the mortgagee of a vehicle * * *” Calif. Vehicle Code, Sec. 67.]

[(2) “‘Owner’ is a person having all the incidents of ownership including the legal title of a vehicle whether or not such person lends, rents or pledges such vehicle; the person entitled to the possession of a vehicle as the purchaser under a conditional sale contract; the mortgagor of a vehicle, * * *” Calif. Vehicle Code, Sec. 66.]

[(3) “‘The registration card shall contain upon the face thereof the date issued, the name and address of the owner and of the legal owner, if any, the registration number assigned to the vehicle and a description of such vehicle as complete as that required in the application for registration for such vehicle.’” Calif. Vehicle Code, Sec. 152.]

“(a) * * * The certificate of ownership shall contain upon the face thereof the identical information required upon the face of the registration card.

“(b) * * * The certificate of ownership shall contain upon the reverse side forms of notice to the department of a transfer of the title or interest of the owner or legal owner and an application for such transfer by the transferee.” Calif. Vehicle Code, Sec. 153.

"A. Yes, we received them from the respective places that were paid off.

"Q. You mean?

"A. The Bank of Pinole, the Universal C.I.T. and the Bank of Berkeley."

(Reporter's Transcript, page 7.)

"Q. (By Counsel for the Trustee): You had the pinks³ in your possession on February 18, 1947, or the day after, did you not?

"Mr. McLeod: He has not so testified, Counsel.

"A. I don't know what date we had the pinks, sir. We merely made the transaction on February 18, 1947.

"Mr. Margolis: Q. Yes?

"A. Drew up the contract and mailed, presumably the checks to these respective companies, attached to an original of these authorizations, requesting them to accept the money and send us titles to the vehicles.

"Q. When did you receive the titles to the vehicles from the people you just enumerated?

"A. I don't know.

"Q. Does your file show it?

"A. No, I don't think so.

³"Pinks," also called "pink slips," are expressions used to indicate "Certificates of ownership" referred to in sections 151, 153 and 196, California Vehicle Code.

“Q. Would the cancellation of your checks going to those three people you have enumerated refresh your memory if you could tell the dates from the cancellation stamps?

“A. That would tell us what time our bank honored the checks; that is all.

“Q. I mean with relation to your receipt of the ownership certificates?

“A. No, I have no means of knowing what the actual date was the office received these particular certificates.

“Q. Would there be anything in your files to indicate what date they were received?

“A. I doubt it very much. We have no reason to make a record as to when we receive certificates from a company. We would pay a loan off, make records, oh, of various natures, not of that.

“Q. You don't affix any file stamp to the letter of transmittal?

“A. Not in that case. We do with the check-off when received [32] from the Department of Motor Vehicles; not from anyone else.

“Q. Were there any letters accompanying the pink ownership certificates from the three persons to whom you made the pay-offs, received by your company?

“A. I don't know.

“Q. You don't know anything about it?

“A. No.

“Q. Would you know whether your file indicated that?

“A. If it does, I am positive Counsel has all the file connected with the transaction except the letter of the original transmission to the Department of Motor Vehicles of the pink slips. It is our usual practice not to save those things for any purpose whatsoever. The fact that we pay off, if the company sends the pink slip, the check serves the purpose. We have no reason for keeping merely a form letter, you might say, as usually attached, ‘We send in return for the money received.’ There is no point in keeping it.”

(Reporter’s Transcript, pages 24 and 25.)

In coming to the conclusion that had the procedure just above referred to been followed, the creditors would have been without any basis for an attack upon the validity of the chattel mortgage before the court, I did not overlook the fact that, in answer to the question propounded by counsel for the trustee, “Can you tell us any reason for waiting from February 18th to March 21st before sending the transmittal with the necessary papers to Sacramento?” the witness (Ahrens), the representative of the reclamation petitioner, while testifying in support of the petition in reclamation, had said, “Yes, because Mr. Hayner did not have the registration slips and in order to complete the due filing with the Department of Motor Vehicles, they require that you have accompanying the chattels, the ownership certificates and also the registration certificates before they will complete the recordation of it.”

(Reporter’s Transcript, page 23.)

However, in my opinion, this answer provided no legal excuse for the failure and neglect on the part of the reclamation petitioner [33] to take the necessary steps to give constructive notice of the execution of said chattel mortgage, within "a reasonable time" after such execution, inasmuch as section 196 of the California Vehicle Code declares that "When the chattel mortgage * * * has deposited with the department a copy of the chattel mortgage as provided in section 195 thereof such deposit constitutes constructive notice⁴ of said mortgage and its contents to creditors and subsequent purchasers and encumbrances * * *" (Underlining referee's.)

Because section 181 of the California Vehicle Code states, "The department upon receipt of a properly endorsed certificate of ownership and the proper registration card and upon receipt of the required fee shall register the vehicle under its registration number in the name of the new owner and new legal owner if any, and shall issue a new registration card and certificate of ownership as provided upon an original registration * * *" the reason for the long negligent delay on the part of the reclamation petitioner in sending the copy of the

⁴"The method provided in this chapter for giving constructive notice of a chattel mortgage on a vehicle registered hereunder is exclusive and any such chattel mortgage is excepted from the provisions of sections 2957, 2959, 2965 and 2966 of the Civil Code." Calif. Vehicle Code, Sec. 198.

chattel mortgage to the Department of Motor Vehicles at Sacramento might legally be justified, only, if the question of ownership of the motor vehicles, as of a particular date, were involved, but inasmuch as the only question which the court was called upon to determine, in the instant matter, was whether or not there was unreasonable delay in giving to creditors constructive notice of the execution of said chattel mortgage, the inadequacy of the excuse above given is readily to be seen. Particularly is this so, when two other significant facts are taken into consideration, i.e., (1) [34] the testimony of the witness (Ahrens)⁵ relative to the rec-

5“Q. (By Counsel for Trustee): And you say that oftentimes you wait before you send the pink ownership certificates to Sacramento?

“A. Especially do we do that in the months of February and March. It is necessary, in the State of California, that a motor vehicle registrant send in, I think the first Monday of February, somewhere around the 5th or 6th, he must send in an application for the current year's tax by that date or be fined a substantial figure. In making loans, during that period of time, why, it is common practice to complete them when we obtain the ownership certificate and await the disposition of the Department of Motor Vehicles in Sacramento to send back the current registration before we go through the mechanics of sending up a chattel mortgage and title, because of the fact that it just duplicates the work. We have to do the same thing all the time.

“Q. In other words, you wait until you get a batch together and send up?

“A. And we also wait for the registration certificates. The usual practice in an office—we all have a way of doing business—in our office, the

lamation petitioner's legally inexcusable system of delay in sending copies of chattel mortgages for deposit with the Department of Motor Vehicles (Reporter's Transcript, pages 25 and 26) and (2) the acknowledged unreasonable delay in the recordation of the very chattel mortgage (here in controversy) in the office of the Recorder of Alameda County, California.

In their briefs counsel for the reclamation petitioner urged very strongly that this matter should be governed by the ruling *In re Mercury Engineering, Inc.* (D.C., S.D., Calif.), 68 F. Supp. 376. But, in so urging the court to follow such ruling, counsel, in my opinion, overlooked two important factors, (1) that the facts in the above cited case have no kinship whatsoever with the facts in the matter now before the court, and (2) that a court is not bound to follow cases wherein the facts differ as plainly as do the facts *In re Mercury Engineering, Inc.*, *supra*, and those present herein.

See *Sharon v. Sharon* (S. Ct., Calif.), 75 Cal. 1, 26, 16 P. 345, 356, wherein it is said, "The language of a court must always be read in view of the facts before it," and *People v. Malowitz* (D.C. App., Calif.), 133 C.A. 250, 255, 256, 24 P. (2d) 177, 179, in which it is declared, "* * * by no judicial state-

practice is that every week or ten days we send up all we have acquired that are completed.

"Q. That accumulated between the week or ten days period? A. That is right.

"Q. That condition prevailed with respect to this transaction? A. Beg pardon, sir?

"Q. That condition prevailed with respect to this transaction? A. I would assume so."

ment, however accurate and justly applicable to the case under consideration, may later cases, perhaps dependent upon altered facts or conditions, be conclusively defined, limited or determined."

The major question which the court was called upon to decide herein was whether or not the creditors of the bankrupt had been given constructive notice of the existence of the chattel mortgage in controversy, within a reasonable time after the date of its execution.

In this connection, it is to be remembered that it thus has been held: "A delay may be necessary and yet unreasonable. If it is made necessary by the negligence of the party chargeable therewith, such delay is in legal contemplation unreasonable, however imperatively necessary it may have been," *Rogers v. Texas & P. Ry. Co.* (Ct. Civ. Apps., Texas), 94 S.W. 158, 162.

It was ruled in *National Bank of Bakersfield v. Moore* (C.C.A. 9), 247 F. 913, 918, that if a chattel mortgage is withheld beyond a reasonable time necessary for its being put on record, it [36] is void as against creditors of the mortgagor, regardless of whether they become creditors before or after its execution.⁶

⁶Examining the record herein as a federal court has the legal right to do, *Bowe-Burke Mining Co. v. Willcuts* (D.C., Minn.), 45 F. (2d) 394, 395, *The Golden Gate* (C.C.A. 9), 286 F. 105, 106; *Freshman v. Atkins*, 269 U. S. 121, 124, 46 S. Ct. 41, 42, 70 L. Ed. 193, 195, it unquestionably appears from the schedules of the bankrupt that said bankrupt, prior

In *Bank of America, etc., v. Sampsell* (C.C.A. 9), 114 F. (2d) 211, 213, the court said, "Giving effect to the rule announced in the decided state cases, it is fairly clear that the proper interpretation of § 195 of the Vehicle Code is that a mortgage on motor vehicles which is not promptly recorded is void as to creditors, and as to subsequent purchasers and encumbrances, whose interests arise prior to the date of compliance with the statute. This construction is in harmony with the declared policy of the state hostile to secret liens. *Calif. Civ. Code* § 3440; *Ruggles v. Cannedy*, 127 Cal. 290, 53 P. 911, 59 P. 827, 46 L.R.A. 371; *Noyes v. Bank of Italy*, 206 Cal. 266, 274 P. 68; *Washington Lumber & Millwork Co. v. McGuire*, 213 Cal. 13, 14, 1 P. 2d 437."

In their briefs, counsel for the petitioner in reclamation strongly urged that, inasmuch as the motor vehicles involved were subject to liens at the time a part of the money loaned to the bankrupt was used to pay off the claimed prior liens, the rule relative to the prompt deposits of copies of chattel mortgages with the Department of Motor Vehicles,

to the execution and depositing of the aforesaid copy of the chattel mortgage with the Department of Motor Vehicles was indebted to more than thirty creditors in an aggregate sum of considerably more than \$10,000.00, and that between the date of the execution of said chattel mortgage and said deposit thereof with the Department of Motor Vehicles, said bankrupt became indebted to creditors in a sum aggregating, at least \$300.00.

in order to foreclose attacks by interested creditors, does not apply. The argument, in my opinion, had to fail for two reasons, (1) because there is no law to justify such a holding, in the face of the decided cases of the State of California which must be followed by federal courts, and (2) because the validity of any of the purported prior liens never was before the court for determination; hence whether such purported liens were valid, or otherwise, never had to be determined by the court in this proceeding.

Having carefully considered the evidence and the briefs herein, I made the following order on July 31, 1947:

“This matter comes before the court on a petition in reclamation filed herein on July 15, 1947, by Stanley M. McLeod, Esq., and Carroll F. Jacoby, Esq., on behalf of Budget Finance Plan, Incorporated, a corporation; upon the order to show cause based upon said petition in reclamation; upon the answer to said petition in reclamation, filed herein by Max H. Margolis, Esq., on behalf of John O. England, the trustee of the above named bankrupt's estate; upon the record herein, including the evidence offered and received relative to said petition, order to show cause and answer, at the time of the hearing held before the undersigned referee on July 22, 1947.

“The matter having been submitted on briefs, and said briefs having been placed before the court, and the court, having considered said briefs in connec-

tion with the aforesaid evidence and the record herein, and now being advised fully in the premises, finds that:

“1. The chattel mortgage, upon which said claimant, Budget Finance Plan, Incorporated, a corporation, bases its claim for reclamation, was executed by the above-named bankrupt, in the County of Alameda, State of California, on February 18, 1947;

“2. The chattel mortgage, executed as aforesaid, was not offered for registration with the Division of Registration of the Department of Motor Vehicles of the State of California, until March 21, 1947;

“3. The chattel mortgage, executed as aforesaid, was not recorded in the County of Alameda, State of California, until June 14, 1947;

“4. Taking into consideration all the facts and circumstances shown by the record, and particularly insofar as the time elapsing between the date of the execution of said chattel mortgage [38] and the registering thereof with the Department of Motor Vehicles is concerned, said chattel mortgage was not offered for registration with the Division of Registration of the Department of Motor Vehicles of the State of California within a reasonable time after its execution and was, and now is, void as against all creditors who became such prior to the date upon which said chattel mortgage was offered for registration;

“5. The chattel mortgage, as against all creditors who became such prior to the date upon which said chattel mortgage was offered for registration with the Division of Registration of the Department of Motor Vehicles of the State of California, was, at the time of the filing of the petition in bankruptcy herein, and now is, invalid;

“6. There are numerous creditors of the bankrupt who became such creditors prior to the date upon which said chattel mortgage was offered for registration with the Division of Registration of the Department of Motor Vehicles of the State of California.

“Based upon the record herein, including the evidence offered and received upon the hearing of said petition for reclamation and the findings of fact hereinbefore set forth, the court concludes as matters of law that:

“1. The failure and neglect of the mortgagee, Budget Finance Plan, Incorporated, or any one on its behalf, to offer said chattel mortgage for registration with the Division of Registration of the Department of Motor Vehicles of the State of California until more than thirty days after the date of the execution of said chattel mortgage was an unreasonable delay and that, as a consequence of said unreasonable delay said chattel mortgage became, and now is, void as against all creditors of the bankrupt who became creditors of said bankrupt prior to the date said chattel mortgage was offered for registration with the Division of Regis-

tration of the Department [39] of Motor Vehicles of the State of California and that said petition for reclamation should be denied and the order to show cause based thereon discharged, and

“2. Because counsel for the mortgagee stated in open court that the delay in recording said chattel mortgage in Alameda County, State of California, until June 14, 1947, was an unreasonable delay after the date of the execution thereof, the effect of said last mentioned delay has become, and now is, moot.

“It Hereby Is Ordered that the petition for reclamation filed herein by and/or in behalf of Budget Finance Plan, Incorporated, be, and it is, Denied, and the order to show cause be, and it is, Discharged, all without prejudice, however, to said Budget Finance Plan, Incorporated, to file an unsecured claim herein, in such amount as it may be advised.

“Dated July 31, 1947.

“BURTON J. WYMAN,

“Referee in Bankruptcy.”

Subsequently, and on August 9, 1947, the following verified petition for review was filed herein:

“The petition of Budget Finance Plan, Inc., a corporation, respectfully represents and shows:

“1. That your petitioner is a creditor of Buddie Jerome Hayner, bankrupt herein, and claims as security a chattel mortgage on certain motor vehicles and equipment.

“2. That heretofore, on the 15th day of July, 1947, petitioner filed its Petition for Reclamation, verified July 14, 1947, to recover possession of said motor vehicles and equipment from the Trustee herein, and an Order to Show Cause was duly issued thereon.

“3. That thereafter, on July 22nd, 1947, the said matter came on regularly for hearing on the said Petition for Reclamation, Order to Show Cause, and Answer of Trustee. [40]

“4. That thereafter and on the 31st day of July, 1947, the said Referee did make Findings of Fact, Opinion, Conclusions of Law, and an Order thereon; that the said Order is as follows:

“It Is Hereby Ordered that the petition for reclamation filed herein by and/or in behalf of Budget Finance Plan, Incorporated, be, and it is, Denied, and the order to show cause be, and it is, Discharged, all without prejudice, however, to said Budget Finance Plan, Incorporated, to file an unsecured claim herein, in such amount as it may be advised.

“Dated July 31, 1947.

“BURTON J. WYMAN,

“Referee in Bankruptcy.

5. The said Order is erroneous for the following reasons:

“a. That the said Order and the opinion supporting it are against law.

“b. That the findings of fact and conclusions of law upon which said order is based are not supported by and are inconsistent with the evidence herein.

“c. That the findings of fact do not support and are inconsistent with the opinion, conclusions of law and order herein.

“d. That the said Order does not follow the rule laid down by the Court in *In re Mercury Engineering, Inc.*, 68 Fed. Sup. 376 (D.C., S.D., Calif., Central Div.).

“e. That the findings of fact fail to find on a material issue, in this, that the evidence shows without contradiction that the delay in filing the chattel mortgage with the Department of Motor Vehicles, if any, was due to the failure of the said Department of Motor Vehicles to issue certificates of registration, and through no fault of petitioner.

“f. That the findings of fact fail to find on a material issue, in this, that the evidence shows without contradiction that the transfer of legal ownership in said motor vehicles occurred between Universal CIT Corporation, Bank of Berkeley, and Bank of Pinole, the then legal owners, and petitioner, and not from the [41] bankrupt; that there was therefore no transfer of interest in the motor vehicles from bankrupt to petitioner except the excess, if any, over the interests of said transferees in the total sum of \$4,024.30.

“g. That the findings of fact fail to find on a material issue, in this, that the evidence shows without contradiction that the total value of said

motor vehicles is the sum of \$4,000.00, and that the unpaid balance due petitioner is in excess of \$4,700.00.

“h. That findings of fact 4, and conclusions of law 1, insofar as they find or hold that the delay, if any, was unreasonable and that therefore the chattel mortgage is void are contrary to the law and the evidence, and that the record shows that the delay in registering the said chattel mortgage with the Department of Motor Vehicles, if any, was a reasonable one.

“Wherefore, your petitioner prays for a review of said order by the Judge, and that the said order be vacated and set aside.

“Dated August 9, 1947.

“BUDGET FINANCE
PLAN, INC.,

“Petitioner.

“By C. H. AHRENS,

“Vice Pres. of

Said Corporation.

“STANLEY M. McLEOD,

“CARROLL F. JACOBY,

“Attorneys for Petitioner.”

[Verification omitted for sake of brevity.]

Papers Handed Up Herewith

I hand up herewith, as a part of this certificate and report, the following papers:

1. Petition for Reclamation;

2. Order to show cause on Petition for Reclamation;
3. Trustee's Answer to Petition for Reclamation and Order to Show Cause;
4. Petitioner's Opening Brief on Petition for Reclamation;
5. Trustee's Memorandum in Opposition to Petition for Reclamation, etc.;
6. Petitioner's Reply Brief; [42]
7. Order Denying Petition for Reclamation, etc.;
8. Petition for Review of Referee's Order Denying Petition for Reclamation, etc.;
9. Reporter's Transcript relative to Petition for Reclamation, and
10. Envelope containing Exhibits Offered and Received in Evidence.

Dated October 27, 1947.

Respectfully submitted,

/s/ BURTON J. WYMAN,

Referee in Bankruptcy.

[Endorsed]: Filed Oct. 27, 1947. [43]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the Southern Division of
the United States District Court for the Northern
District of California, held at the Court Room
thereof, in the City and County of San Francisco,

on Monday, the 10th day of November, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

ORDER APPROVING REFEREE'S CERTIFICATE ON PETITION FOR REVIEW

This matter came on regularly this day for hearing on Referee's certificate on petition for review. After hearing the arguments of Mr. Margolis and Mr. McLeod, it is Ordered that the Referee's certificate be and the same is hereby approved. [44]

[Title of District Court and Cause.]

ORDER CONFIRMING REFEREE'S ORDER

The petition of Budget Finance Plan, Incorporated, for review of Referee's Order denying petition for reclamation on behalf of said Budget Finance Plan, Incorporated, made and entered on July 31, 1947, having been heretofore heard and submitted, and being now fully considered, it is by the Court Ordered that the aforesaid Order, Judgment and Decree of the Referee, be, and the same hereby is, Confirmed.

Dated November 17, 1947.

MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed Nov. 17, 1947. [45]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Budget Finance Plan, a corporation, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the Order of the United States District Court for the Northern District of California, Southern Division, dated November 10 and 17, 1947, and entered November 17, 1947, confirming the Order of Referee in Bankruptcy Burton J. Wyman, dated July 31, 1947, denying appellant's petition for reclamation and discharging Order to Show Cause thereon and holding chattel mortgage on motor vehicles void as to creditors of the bankrupt, and appeal is taken from the whole thereof.

Dated this 10th day of December, 1947.

CARROLL F. JACOBY,
Attorney for Budget Finance
Plan, a Corporation,
Appellant.

[Endorsed]: Filed Dec. 10, 1947. [46]

[Title of District Court and Cause.]

APPELLANT'S STATEMENT OF POINTS
TO BE URGED UPON APPEAL

To John O. England, Trustee in the above entitled proceeding, and Max H. Margolis, Esq., his attorney:

You and Each of You will please take notice, under the provisions of Rule 75 of the Rules of Civil Procedure for the United States District Court, that the Appellant, Budget Finance Plan, a corporation, intends to rely upon the following points in its appeal to the Ninth Circuit Court of Appeals from the Order of the above entitled Court dated November 10 and 17, 1947, confirming the Order of the Referee in Bankruptcy denying appellant's petition for reclamation: [47]

I.

That the District Court in its Order of November 10 and 17, 1947, erred in confirming the Order of Burton J. Wyman, Referee in Bankruptcy, dated July 31, 1947, denying appellant's petition for reclamation.

II.

That the District Court in its said Order erred confirming findings of fact 4 of said Order of Burton J. Wyman, Referee, in that said findings of fact are clearly erroneous, are not supported by the evidence, and are contrary to law.

III.

That the District Court in its said Order erred in confirming findings of fact 5 of said Order of Burton J. Wyman, Referee, in that said findings of fact are clearly erroneous, are not supported by the evidence, and are contrary to law.

IV.

That the District Court in its said Order erred in confirming conclusions of law 1 of said Order of Burton J. Wyman, Referee, in that said conclusions of law are clearly erroneous, are not supported by the evidence, and are contrary to law.

V.

That the District Court in its said Order erred in confirming said Order of Burton J. Wyman, Referee, in that said Order fails to find on a material issue in this, that the evidence shows without contradiction that the transfer of legal ownership in said motor vehicles sought to be recovered by appellant in its petition for reclamation occurred between Universal C.T. Corporation, Bank of Berkeley, and Bank of Pinole, the then legal owners, and Budget Finance Plan, a corporation, and not from the bankrupt; that there was no transfer of interest in the motor vehicles from bankrupt to petitioner since the vehicles do not and did not exceed in value the amounts of the liens held by said transferees. [48]

VI.

That the District Court in its said Order erred in confirming said Order of Burton J. Wyman, Referee, in that said Order of Burton J. Wyman, Referee, is clearly erroneous and contrary to the law and the evidence insofar as it finds or holds that the delay, if any, in offering the chattel mortgage for registration with the Department of Motor Vehicles was or is unreasonable, and is clearly erroneous and contrary to the law and the evidence insofar as it holds or finds that the chattel mortgage on the motor vehicles at any time was, or now is, invalid or void for any reason.

VII.

That by virtue of the transfer of legal ownership in the motor vehicles from Universal CIT Corporation, Bank of Berkeley, and Bank of Pinole, to Budget Finance Plan, a corporation, appellant, appellant acquired an interest therein not dependent upon a transfer from the bankrupt, and that therefore the District Court in its said Order erred in confirming the said Order of Burton J. Wyman, Referee, denying petition for reclamation, and said Orders are clearly erroneous and contrary to law in that they fail to recognize or give effect to said transfers and said legal ownership of Budget Finance Plan.

Dated this 10th day of December, 1947.

/s/ CARROLL F. JACOBY,
Attorney for Budget Finance Plan, a Corporation,
Appellant.

Receipt of a copy of Appellant's Statement of Points to Be Urged on Appeal is acknowledged this 10th day of December, 1947.

/s/ MAX H. MARGOLIS,
Attorney for Trustee.

[Endorsed]: Filed Dec. 10, 1947. [49]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

Budget Finance Plan, a corporation, having filed its Notice of Appeal to the Ninth Circuit Court of Appeals from the Order of District Court dated November 10 and 17, 1947, files this, its designation of Contents of the Record on Appeal and does designate the following portions of the record, proceedings and evidence to be contained in the Record on Appeal herein, to-wit:

I.

Petition for Reclamation of Budget Finance Plan, a corporation, for reclamation of mortgaged property.

II.

Order to Show Cause on Petition for Reclamation.

III.

Trustee's Answer to Petition (of Budget Finance Plan) for Reclamation and Order to Show Cause.

IV.

Transcript of testimony of hearings before Burton J. Wyman, Referee in Bankruptcy, on Tuesday, July 22, 1947, and exhibits.

V.

Findings of Fact, Opinion, Conclusions of Law, and Order Denying Petition for Reclamation Filed Herein on Behalf of Budget Finance Plan, Incorporated, of Burton J. Wyman, Referee in Bankruptcy, dated July 31, 1947. (See pages 22 to 24 inclusive, Certificate and Report of Referee dated October 27, 1947.)

VI.

Petition for Review of Referee's Order Denying Petition for Reclamation on Behalf of Budget Finance Plan, Inc. (See pages 24 to 26 inclusive, Certificate and Report of Referee dated October 27, 1947.)

VII.

Order of District Court dated November 10 and 17, 1947, confirming order of Burton J. Wyman, Referee in Bankruptcy, dated July 31, 1947, denying petition for reclamation of Budget Finance Plan, a corporation.

VIII.

Certificate and Report of Referee in Bankruptcy dated October 27, 1947.

IX.

Notice of Appeal dated December 10, 1947.

X.

Appellant's Statement of Points to be urged on appeal.

Dated this 10th day of December, 1947.

/s/ CARROLL F. JACOBY,
Attorney for Budget Finance Plan, a Corporation,
Appellant.

Receipt of copy of the foregoing Designation of Record on Appeal is acknowledged this 10th day of December, 1947.

/s/ MAX H. MARGOLIS,
Attorney for Trustee.

[Endorsed]: Filed Dec. 10, 1947. [51]

[Title of District Court and Cause.]

APPELLEE'S DESIGNATION OF ADDI-
TIONAL PORTIONS OF THE RECORD
ON APPEAL UNDER RULE 75(a)

To the Above-Entitled Court, and to C. W. Calbreath, Esq., Clerk of Said Court, and to Carroll F. Jacoby, Attorney for Appellant, Budget Finance Plan, a Corporation:

Comes now John O. England, Trustee of the estate of Buddie Jerome Hayner, bankrupt above-

named, Appellee herein, and in accordance with Rule 75(a) of the Federal Rules of Civil Procedure and designates the following as the portions of the record, proceedings and evidence to be contained in the Record on Appeal, notice of which said appeal has heretofore been filed by said appellant on the 10th day of December, 1947, as follows:

1. The entire Certificate and Report of Referee on Petition for Review of Referee's Order Denying Petition for Reclamation on Behalf of Budget Finance Plan, Incorporated, pages 1 through 27 inclusive; and
2. Item No. 10 Envelope containing Exhibits Offered and Received in Evidence which appears on page 27 of the aforesaid item No. 1, namely, the Certificate and Report of Referee, etc., containing claimant's Exhibits No. 1, 2, 3 and 4.
3. This designation of additional portions of the Record on Appeal dated December 18, 1947.

Respectfully submitted,
MAX H. MARGOLIS,
Attorney for Trustee-
Appellee.

[Endorsed]: Filed Dec. 18. 1947. [52]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the Appellant herein may have to and including February 28, 1948, to file the Record of Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated January 19, 1948.

LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed Jan. 19, 1948.

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 53 pages, numbered from 1 to 53, inclusive, contain a full, true, and correct transcript of the records and proceedings in the Matter of Buddie Jerome Hayner, Bankrupt, No. 36787-R, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on

appeal is the sum of \$8.60 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 13th day of February, A. D. 1948.

[Seal] C. W. CALBREATH,
 Clerk,
 /s/ E. H. NORMAN,
 Deputy Clerk.

In the Southern Division of the United States
District Court for the Northern District of
California

No. 36787-R

In the Matter of
BUDDIE JEROME HAYNER,
Bankrupt.

PETITION IN RECLAMATION
(Budget Finance Company)

Tuesday, July 22, 1947, 2:00 P.M.

Appearances:

For the Trustee: Max H. Margolis, Esq.

For the Petitioner in Reclamation: Stanley McLeod, Esq., and Carroll F. Jacoby, Esq.

For the Bankrupt: Henderson R. Wallace, Esq.,
Representing Messrs. Wallace & Parker. [1*]

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

The Referee: Matter of Buddie Jerome Hayner.

Mr. Wallace: Ready, your Honor.

Mr. Margolis: There is a petition on file, is that correct? A petition in reclamation?

Mr. McLeod: An order of examination.

The referee: Let's take up the petition in reclamation and dispose of that.

Mr. Margolis: Yes.

The Referee: Let's dispose of that.

Mr. McLeod: If your Honor please, this is a petition in reclamation filed by The Budget Finance Plan, Incorporated, and is based upon a chattel mortgage, which was executed by the bankrupt to the claimant for the sum of \$5,000, and which mortgage covers certain machinery and personal property, equipment, as well as two automobile trucks and one automobile. I think the mortgage can be distinctly separated as to the personal property and the vehicles, because the mortgage, which I will prove by the proper testimony—I notice that the Trustee, on information and belief, denied all the allegations—but the mortgage was executed on the 18th of February, 1947, and after notice of intention had been recorded setting the date of consummation as February 26th, 1947. The chattel mortgage was not recorded in the office of the County Recorder of Alameda County until some time in June, June 14, 1947. I think the facts there speak for themselves.

The Referee: Are you willing to concede the mortgage is [2] void?

Mr. McLeod: I can see no alternative.

The Referee: That mortgage, then, is out of the way.

Mr. McLeod: On the personal property.

The Referee: Yes.

Mr. McLeod: However, as to the mortgage upon the motor vehicles, a certified copy of the mortgage was forwarded to the Division of Registration of the Department of Motor Vehicles on March 21, 1947, and I should like to put on a representative of the claimant to verify the facts.

The Referee: Very well.

CHARLES H. AHRENS

produced as a witness for the Petitioner; sworn.

The Referee: What is your name?

A. Charles H. Ahrens.

Direct Examination

By Mr. McLeod:

Q. Mr. Ahrens, you are an officer of the Budget Finance Plan, Incorporated?

A. That is right.

Q. What is your title? A. Vice-president.

Q. Are you familiar with a transaction between your company and the bankrupt, Mr. Hayner?

A. I am.

Q. Will you kindly state the facts of the transaction?

A. Do you want me to refer to dates in the matter, sir?

(Testimony of Charles H. Ahrens.)

Q. If you will. Do you want this for reference?

A. The Oakland office of our organization advanced a loan to Mr. Hayner under date of February 18, 1947, in the amount of [3] \$5,000, the purpose of which was to pay off three separate loans on the vehicles he owned at that particular time.

Q. Will you kindly state what those loans were and the name of the holders thereof?

A. At that time one of the vehicles was encumbered by the Bank of Pinole in the amount of \$807.10; on another, he was obligated to the Universal C.I.T. in the amount of \$929; then, on a 1946 Buick, to the Bank of Berkeley in the sum of \$2,288.20. There was a total lien against these three vehicles of \$4,024.30. He applied for a refinancing of the indebtedness plus an additional amount of cash for use in his business. He offered as security for the loan, the three vehicles and what personal property in the nature of equipment and machinery he had in the 20th Century Fixture Company, of which I understood he was the sole owner.

Mr. McLeod: I might say, for the benefit of your Honor and Counsel, that due to the late date of the recordation of the original mortgage, it has not yet been returned to the claimant and I would like to ask Mr. Ahrens——

Q. There is attached to your petition a copy of the purported chattel mortgage and promissory note. Is that a correct and true copy of the original?

(Testimony of Charles H. Ahrens.)

Mr. Margolis: I object to that, your Honor, on the ground that no proper foundation has been laid. Did the witness prepare it? Was it prepared under his direct supervision? Was he in the office? I think the foundation should be laid before he can ask him whether it is a correct copy. [4]

The Referee: I think that is correct.

Q. (By Mr. McLeod): Mr. Ahrens—

A. I might support that this way, of course, it is not the fact stated. Nevertheless, it is a matter of policy that our papers are made with an original and three copies. I mean, taking a matter up that way, carbons are inserted between the original and the three copies. This one represents one of the copies. The original is white; this is blue for file purposes; the yellow is used for filing with the Department of Motor Vehicles and the pink one goes to the customer?

Q. Is that executed at the same time?

A. Oh, yes. You will find the signatures are carbon copies of the signatures on the original. In other words, the carbons were not removed at the time the original was executed. They are signed by the person obtaining loans and the necessary witnesses while the carbons are in between the various copies. I believe, beyond a reasonable doubt, it would be a true and correct copy of the mortgage.

Mr. McLeod: If that is not satisfactory to Counsel, I will reserve that and put the bankrupt on the stand to prove his own signature.

(Testimony of Charles H. Ahrens.)

Mr. Margolis: This is an adversary proceeding. We have an Answer here. It is a matter of some importance to the Trustee and the creditors and to the Court, I assume. Did you have anything to do with the preparation of this, Mr. Ahrens?

A. No, sir. [5]

Mr. Margolis: I think he ought to establish it, then, your Honor.

The Referee: Let's take the testimony of this witness and then see what the other testimony is.

Q. (By Mr. McLeod): Now, Mr. Ahrens, what action was taken on the execution of this chattel mortgage?

Mr. Margolis: I object to the question—I beg your pardon. I thought you were finished.

Q. (By Mr. McLeod): What action was taken by your company upon the execution and delivery of this chattel mortgage and promissory note?

A. Will you elaborate on that a little? Exactly what do you mean?

The Referee: Read the question.

A. Exactly what do you mean?

Q. (By Mr. McLeod): What I want to know is, did you take the chattel mortgage and promissory note and then file it away, or what did you do with it?

A. Well, the chattel mortgage was taken in return for the moneys advanced, and it is a matter of policy of the company to record the original chattel mortgage and send carbon copies of the

(Testimony of Charles H. Ahrens.)

chattel mortgage to the Department of Motor Vehicles, showing our interest in the vehicles in the Department of Motor Vehicles at Sacramento.

Mr. Margolis: I move that the answer be stricken on the grounds that it is not responsive. The question was: What was done; was it filed by the company, your Honor. [6]

The Referee: The answer may go out. Read the question to the witness.

(Question read by the reporter.)

A. I can best answer that, of course, not being present at the office at the time this particular thing occurred, but I know as far as the records indicate in the office that——

Mr. Margolis: I object to the answer, your Honor.

Q. (By Mr. McLeod): Are those records kept under your supervision, under your control, Mr. Ahrens?

A. Not necessarily under my control, no, sir. They are part of the office records available to me or anyone, at any time, that might be interested.

Q. Mr. Ahrens, as far as the motor vehicles were concerned, did you obtain from anyone, the pink certificates of ownership of the vehicles?

A. Yes, we received them from the respective places that were paid off.

Q. You mean?

A. The Bank of Pinole, the Universal C.I.T. and the Bank of Berkeley.

(Testimony of Charles H. Ahrens.)

Q. And did you also obtain the white certificates of registration?

A. We did not obtain the white certificates for a considerable time after the completion of the loan, because the white certificates at the time the loan was made, were in transit to Sacramento. That was during the month of February. They were in transit to Sacramento for the 1947 licenses and had not been returned from Sacramento. They are used [7] as a receipt for application for the current year license.

Q. Now, upon obtaining the pink certificates, what action did you take then?

Mr. Margolis: I am going to object to that question, your Honor, upon the ground that no proper foundation has been laid, assuming something not in evidence. The question is what the witness did. He testified a minute ago that he was not there; the files were open to inspection.

The Witness: That is right.

Mr. Margolis: I think the question here should be directed to the witness, in trying to prove the petitioner's case here, what he did, what he knows about the transaction, not what someone else did, your Honor.

The Witness: I can say this: I personally——

Mr. Margolis: I object to a voluntary statement, your Honor. There is no question pending. There is a question pending to which I made an objection. I submit the objection.

(Testimony of Charles H. Ahrens.)

The Referee: What is the question?

(Question read by the Reporter.)

Q. (By the Referee): Did you obtain the pink certificates yourself?

A. No, sir. When we come to a point of objection, sir——

The Referee: Wait a minute. You have Counsel who can make objections. The objection is sustained.

Mr. Margolis: That is the very point to which the objection is directed, your Honor. [8]

The Witness: Actually——

Mr. Margolis: I am going to object to the voluntary statements of the witness, your Honor.

The Referee: Wait until Counsel asks a question. You may answer after that.

Q. (By Mr. McLeod): Mr. Ahrens, did you send the certificates to Sacramento yourself?

A. No.

Q. Did you personally have any communication from the Division of Registration with respect to the purported chattel mortgage?

A. I, no sir, but the office, which records I have, from the Department of Motor Vehicles, it is here, sent back to the office on the matter of the loan.

Q. Can you testify the letter you are referring to was received by your company?

Mr. Margolis: To which question I am going to object on the ground that it is incompetent, irrelevant and immaterial and no foundation has been laid.

(Testimony of Charles H. Ahrens.)

Mr. McLeod: Mr. Margolis, I hope you don't want me to bring——

The Referee: I don't know what the communication is; I cannot rule on it.

Mr. Margolis: It would seem to me, your Honor, that the testimony to be elicited here—again, I don't want to prove the petitioner's case—is where this document came from, where it was found. I am not trying to circumscribe the petitioner in establishing his case here. [9]

Mr. McLeod: Well, Counsel will concede that the bankrupt has scheduled the Budget Finance Corporation as a secured creditor, the holder of a promissory note, secured by a chattel mortgage upon the vehicles described in our petition.

Mr. Margolis: That is what the schedules show. The Trustee is not bound by the schedules.

Mr. McLeod: May I take my witness off and put Mr. Hayner on the stand for the purpose of proving a few of these fundamental facts?

The Referee: Very well.

(Witness excused.)

BUDDIE JEROME HAYNER

produced as a witness for the Petitioner; sworn.

Direct Examination

By Mr. McLeod:

Q. Mr. Hayner, in February, 1947, did you have any business transactions with the Budget Finance Plan, Incorporated? A. Yes.

(Testimony of Buddie Jerome Hayner.)

Q. What was it?

A. In regards to a loan.

Q. State the details of the loan.

A. I went to the Budget Finance Company and asked them to lend me a sum of money, which they did, for improvements of my business.

Q. I show you a document entitled "Statement of Loan to Budget Finance Plan" and ask you if you can identify it as your signature?

A. It is.

Mr. McLeod: I ask that this be introduced as Claimant's [10] Exhibit No. 1.

The Referee: The Claimant's Exhibit No. 1.

(The document referred to was received in evidence as Claimant's Exhibit No. 1.)

Mr. Margolis: "Petitioner," your Honor.

The Referee: I am just adopting Mr. McLeod's language.

Q. (By Mr. McLeod): Now, Mr. Hayner, I show you a duplicate chattel mortgage and promissory note dated February 18, 1947, purported to be executed by yourself to the Budget Finance Plan and ask you if that is your signature?

A. Yes, it is my signature, a copy of my signature.

Q. Now, you executed this signature?

The Referee: When you say "copy," you mean a carbon copy? A. A carbon copy.

Q. (By Mr. McLeod): You executed that at the time of the original? A. Yes.

(Testimony of Buddie Jerome Hayner.)

Mr. McLeod: May this go in as the Claimant's Exhibit?

(The document referred to was received in evidence as Claimant's Exhibit No. 2.)

Q. (By Mr. McLeod: Mr. Hayner, at the time of the execution of the chattel mortgage and promissory note, did you receive any consideration therefor from the Budget Finance Plan?

A. By consideration, what do you mean?

Q. (By the Referee): Did you receive any money?

A. Yes, I received the sum of \$900 and some odd.

Q. (By Mr. McLeod): What disposition was made of the difference [11] between \$900 and \$5,000?

A. The difference between the \$900 and \$5,000 was money paid off on debts of mine on two trucks and one automobile and a personal loan.

Q. Now, I show you three documents entitled, "Authorization for Pay-off" dated February 18, 1947, and ask if that is your signature on each of those? A. Yes, sir.

Q. Now, these authorizations to pay off indicated that the one addressed to the Bank of Berkeley, Berkeley, California, directed them to accept from the Budget Plan Company \$2,228.20, being the balance due on your accounts to the Bank on a 1946 Buick? A. Yes.

(Testimony of Buddie Jerome Hayner.)

Q. And a second one to the Universal C.I.T. Credit Corporation, 1440 Broadway, directing them also to accept from the Budget Finance Plan \$929, on a 1941 Ford truck; the final one is to The Bank of Pinole at Crockett, California, directing them to accept from the Budget Finance Plan the sum of \$807.10 due on a 1941 Ford.

Mr. McLeod: May these go in as the Claimant's Exhibit?

The Referee: Number 3, as one Exhibit.

(The three documents referred to were received in evidence as Claimant's Exhibit No. 3.)

Q. (By Mr. McLeod): Mr. Hayner, were the two banks and the Universal C.I.T. the legal owners of those trucks?

Mr. Margolis: I object——

Mr. McLeod: I just want to save time.

Q. Did they hold any security for the indebtedness reflected on these authorizations? [12]

A. The Bank of Pinole advanced the cash \$550 to me for payroll. They had no security outside of my note and the automobile and trucks were with the Standard Finance. One-third down was required by law and I financed the rest.

Q. Did you hold the pink slips on these vehicles?

A. No, I did not.

Q. Who did?

A. At the time, I assume the banks did.

Q. They were holding them as security for these indebtednesses? A. Yes.

(Testimony of Buddie Jerome Hayner.)

Q. Had you ever been the legal owner of any of these vehicles? A. No.

Q. Were you the registered owner?

A. The registered owner.

Q. In February, at the time you executed this chattel mortgage and promissory note, did you have the white registration slips? A. No.

Q. Where were they, if you know.

A. They were in transit to the Motor Vehicle Department.

Q. Had you sent them there?

A. I believe I turned them in when I made application for license plates.

Q. You were not able, then, to give the white slips to the Budget Finance Plan? A. No.

Q. Now, did you make payments of any sum to the Budget Finance Plan on this mortgage and note?

A. I made one payment, one full payment, and I made another payment on the interest [13] because I could not meet the second payment.

Q. The second one?

A. The second payment I was not able to meet, so I made a payment on interest. I paid the interest that month on the amount of the note.

Q. You paid one full installment?

A. I paid one full installment.

Q. And then you paid the interest?

A. On the second.

Q. On the second? A. Yes.

(Testimony of Buddie Jerome Hayner.)

Q. Do you recall what the two sums totaled?

A. \$300 some on one, on the regular payment for the note, which there is a record of. On the other I paid \$92, \$98, something like that.

Mr. McLeod: That is all.

Cross-Examination

By Mr. Margolis:

Q. Did you execute any other documents down there at the office of the Budget Finance Company when you signed this note and chattel mortgage, Mr. Hayner? A. Not to my knowledge.

Q. This is the only document you executed, nothing else?

Mr. McLeod: He evidently, Mr. Margolis, executed the three requests to the Finance Companies also.

Mr. Margolis: Perhaps he misunderstood me.

Q. Are these your signatures on these yellow tags which Counsel offered as Claimant's Exhibit No. 3? A. Yes. I see what you mean.

Q. And this signature on Claimant's Exhibit No. 1, is that [14] your signature?

A. Yes, my signature.

Q. Did you execute any other documents, other than the three exhibits just shown you, down in the office of the Budget Finance Company when you made this loan?

A. Not at that time, but I was called back in

(Testimony of Buddie Jerome Hayner.)

after they received the white slips, sometime after the loan was made, to sign the white slips so they could be sent down with the pink slips so they could register the cars with the Budget Finance Company as legal owners, approximately two months after.

Q. Did the white slips come to you or go right to the Budget Finance Company?

A. The white slips came to me. I took them and showed them to them. They still had the pinks. They had not sent the pinks up yet, or something, I don't know what the mix-up was. I signed the white slips then and turned them over to Mr. Burnett of the Budget Finance. He, in turn, sent them along with the pinks to register them as legal owners.

Q. The Ford Stake Truck and the Chevrolet Stake Truck were kept where? With relation to your operation over there in Oakland, were they kept on the premises?

A. The Ford truck was kept on the premises and Mr. Green might have used the Chevrolet to and from home.

Q. I see. After the day's work the Ford was stored there with the rest of these miscellaneous items?

A. Yes, usually. Once in a while it was used.

Mr. Margolis: I have no further questions. [15]

(Testimony of Buddie Jerome Hayner.)

Redirect Examination

Mr. McLeod: I would like to ask another.

Q. (By Mr. McLeod): Mr. Hayner, do I understand you to say you got the white slips back from Sacramento and then sent them over to the Budget Finance Company, gave them to the Budget Finance? A. Yes.

Q. Do you recall when you got them back from Sacramento?

A. No, I don't recall. I do know it was after the time the loan was negotiated; how long after, I don't remember, but it was some time?

Q. A month?

A. I think it was around that, a month, a month and a half, possibly two months.

Q. As soon as you received them, did you immediately take them to the Budget Finance?

A. I think it was two or three days until I got around to doing it. Then I went in and took care of it.

Mr. McLeod: That is all.

The Referee: That is all.

(Witness excused.)

Mr. McLeod: Will you take the stand, Mr. Ahrens?

CHARLES H. AHRENS

having been previously sworn, recalled.

Direct Examination
(Resumed)

By Mr. McLeod:

Q. Mr. Ahrens: I show you a letter from the Division of Registration, Department of Motor Vehicles, Sacramento, California, dated April 17, 1947, addressed to Budget [16] Finance Plan, 419 14th Street, Oakland, California, and I ask you if you have ever seen this letter before?

A. I have.

Q. Where did you see it?

A. I obtained it from the files the office carries on that account.

Q. Was it a part of the file relating to the bankrupt's loan? A. Yes.

Q. Do you know when it was received by your company?

A. No, not specifically, sir. I know it was dated April 17, and mailed from Sacramento on April 17, addressed to the Budget Finance Plan in Oakland. So, it was sometime after April 17. Usually it takes one day to come from Sacramento to Oakland.

Mr. McLeod: I ask that this be introduced in evidence as the Claimant's No. 4.

The Referee: Claimant's Exhibit No. 4.

(The letter referred to was received in evidence as Claimant's Exhibit No. 4.)

(Testimony of Charles H. Ahrens.)

Q. (By Mr. McLeod): Mr. Ahrens, is the bankrupt at the present time indebted to your company?

A. Yes.

Q. In what sum?

A. I don't have the exact figure here. I furnished you with the figures. Oh, yes, I do. I made a note of it. The principal sum of \$4,787.10, with interest due from April 26, 1947. That is \$4,787.10 plus interest from April 26, this year.

Q. Mr. Ahrens, are you familiar with the re-sale value of used automobiles? A. Reasonably so.

Q. Are you familiar with the type and make of automobiles set forth in the chattel mortgage, set forth in this matter? A. I am.

Q. You are aware that there is involved a 1941 Ford Stake Truck and a 1941 Chevrolet Stake Truck and a 1946 Buick, four-door sedan, are you not?

A. That is right.

Q. Do you have an opinion as to the present market value of all of those vehicles?

Mr. Margolis: To which question I object on the ground that no proper foundation has been laid. The witness has not been qualified as an expert. His answer to the first question was, that he has an opinion, but there is no basis for the opinion.

Mr. McLeod: I believe, your Honor, he said he was familiar with the values of used automobiles.

The Referee: That is his statement.

Mr. Margolis: If that is sufficient, I will withdraw the objection.

The Referee: You can question him.

(Testimony of Charles H. Ahrens.)

Mr. Margolis: Does your Honor want me to question him?

The Referee: I am not saying I want you to. I am saying you have the opportunity to.

Mr. Margolis: I did not want to interrupt the normal procedure.

Q. (By Mr. McLeod): Can you tell the Court, Mr. Ahrens, what, in your opinion, is the market value of the 1941 Stake Truck, [18] the subject of this mortgage?

A. I would say about—the Ford?

Q. Yes.

A. I would say, in the neighborhood of \$800 or \$900.

Q. Can you tell the Court, in your opinion, what is the market value of the 1941 Chevrolet Stake Truck?

Mr. Margolis: I will interpose an objection to that, if your Honor please, on the ground that it is incompetent, irrelevant and immaterial. The petitioner here claims to be the owner of the purported chattels. As such, I cannot see what the relevancy of the value of the chattels has. He does not claim the goods or their value. He claims the particular items themselves.

Mr. McLeod: It is alleged in the petition, if your Honor please, that the value here is less than the full amount of the claim; hence, there would be no equity if the petition is correct. We can establish their value here in that regard to be less than the value set forth in the petition.

(Testimony of Charles H. Ahrens.)

The Referee: I will allow it.

The Witness: Approximately the same value.

Q. (By Mr. McLeod): Would you put that value in figures? A. Between \$800 and \$900.

Q. That is for the Chevrolet Truck?

A. Yes.

Q. And can you tell the Court, please, the value, in your opinion, of the 1946 Buick automobile?

A. Between \$2,000 and \$2,200.

Mr. McLeod: No further questions, your Honor.

Cross-Examination

By Mr. Margolis:

Q. When did you last see the 1941 Ford Stake Truck, Mr. Ahrens?

A. About 12 o'clock today.

Q. You saw it at 12 o'clock today.

A. Yes, sir.

Q. Where was it located?

A. On Harrison near 16th in Oakland.

Q. And under what circumstances did you see it, just today at 12 o'clock?

A. It happens to be in a parking lot that I park my car in.

Q. Did you examine it with some particularity?

A. No, sir.

Q. Can you tell us upon what basis you say its approximate value is between \$800 and \$900?

A. It is my occupation to make loans on motor vehicles in California; it has been for a period of some 17 or 18 years. Naturally, I would be

(Testimony of Charles H. Ahrens.)

familiar with the market values of all motor vehicles as used as security and the biggest per cent of all business we do in the State of California.

Q. And did you turn the motor over today?

A. No, sir.

Q. When did you last see it in operation?

A. So far as I can recall, June the 28th.

Q. What were the circumstances on that date when you saw it?

A. June 28th or 29th. It was brought in from the place that the bankrupt apparently had left it or moved to out at Walnut Creek.

Q. When did you last see the 1941 Chevrolet Truck? A. I have not seen it. [20]

Q. You have never seen it? A. No, sir.

Q. Then the basis of your estimated value of \$800 or \$900 could be taken from what?

A. Taken from the experienced opinion of the personnel of our San Francisco office.

Q. No independent knowledge of your own by way of observation? A. No, sir.

Q. You don't know whether it is newly or freshly painted, whether there is a new motor in it, or not? A. To swear to, no, sir.

Q. When did you last see the 1946 Buick Sedan?

A. I did not personally see it, no.

Q. You have never seen it? A. No.

Q. The price of \$2,000 or \$2,400, you have taken from what?

A. Taken from the opinion of the personnel I have in the San Francisco office, who have seen it.

(Testimony of Charles H. Ahrens.)

Q. Not your own opinion? A. No, sir.

Q. You would not know whether it was freshly painted? A. No, sir.

Q. You would not know whether it has had a motor tune-up or not? A. No.

Q. Would it make any difference in the price of the car if those things were done to the car? In other words, freshly painted, a motor clean-up?

A. I think so.

Q. Now, you got the basis for the figure which you gave the Court here from outside information, not your own, in these two instances?

A. In the instances of those [21] two, yes.

Q. Now, do you know whether that file shows any other documents than those introduced in evidence, Mr. Ahrens, other than these documents, referring to them by number, Claimant's Exhibit No. 1, the Budget Finance Plan; Petitioner's Exhibit No. 2, or Claimant's Exhibit No. 2, the Chattel Mortgage and Promissory Note; these three authorizations to pay-off, which represent Claimant's Exhibit No. 3, and this printed form of letter from the Motor Vehicle Department, dated April 17, 1947, addressed to the Budget Finance Company, Claimant's Exhibit No. 4? Was anything else in the file relating to this transaction?

A. An application for credit.

Q. Any correspondence of any kind with the Motor Vehicle Department?

A. Yes, the letter of transmittal.

(Testimony of Charles H. Ahrens.)

Q. Where is that letter?

A. I believe the attorney has it.

Mr. Jacoby: I don't think I have the letter of transmittal.

The Witness: I believe in response to this letter requesting that we send the last issued registration cards.

Q. (By Mr. Margolis): Can you tell whether any correspondence was had with Sacramento which antedated Claimant's Exhibit No. 4, which you have in your hand? A. Sir?

Q. Any correspondence, letters or telegram, which antedated the receipt by your company of this letter of April 17th?

A. On March 21, 1947, there is a carbon copy of an advice to the Department of Motor Vehicles at Sacramento. [22]

Q. Yes?

A. That we have attached a certified copy of the chattel mortgage and the titles to such chattel mortgage to the Motor Vehicle Department along with the necessary fees, which I believe they acknowledged, yes.

Q. Where is the copy of that letter?

A. In the Oakland office.

Q. Did you bring that along with you?

A. I doubt it. I could not say positively, but it is the common practice of our office to send more than one. We just list one after the other, rather than write a separate, distinct instrument on each transmittal we make.

(Testimony of Charles H. Ahrens.)

Q. And the date of this transmittal was?

A. March 21.

Q. You saw that this morning?

A. Not this morning, but I have seen it.

Q. And your letter of transmittal is dated March 21, 1947, and covered the transaction with which we are here concerned? A. That is right.

Q. Can you tell us any reason for waiting from February 18th to March 21st before sending the transmittal with the necessary papers to Sacramento?

A. Yes, because Mr. Hayner did not have the registration slips and in order to complete the due filing with the Department of Motor Vehicles, they require that you have accompanying the chattels, the ownership certificates and also the registration certificates before they will complete the recordation of it.

Q. You already had, on February 18, 1947, in your office—if you don't know of your own knowledge, please tell us—the [23] checks made payable to the Pinole Bank and the Berkeley Bank and the Universal C.I.T. Credit Corporation, did you not? A. Yes.

Q. You had the pinks in your possession on February 18, 1947, or the day after, did you not?

Mr. McLeod: He has not so testified, Counsel.

A. I don't know what date we had the pinks, sir. We merely made the transaction on February 18, 1947.

(Testimony of Charles H. Ahrens.)

Mr. Margolis: Yes?

A. Drew up the contract and mailed, presumably the checks to these respective companies, attached to an original of these authorizations, requesting them to accept the money and send us titles to the vehicles.

Q. When did you receive the titles to the vehicles from the people you just enumerated?

A. I don't know.

Q. Does your file show it?

A. No, I don't think so.

Q. Would the cancellation of your checks going to those three people you have enumerated refresh your memory if you could tell the dates from the cancellation stamps?

A. That would tell us what time our bank honored the checks; that is all.

Q. I mean with relation to your receipt of the ownership certificates?

A. No, I have no means of knowing what the actual date was the office received these particular certificates.

Q. Would there be anything in your files to indicate what date they were received?

A. I doubt it very much. We [24] have no reason to make a record as to when we receive certificates from a company. We would pay a loan off, make records, oh, of various natures, not of that.

(Testimony of Charles H. Ahrens.)

Q. You don't affix any file stamp to the letter of transmittal?

A. Not in that case. We do with the check-off when received from the Department of Motor Vehicles; not from anyone else.

Q. Were there any letters accompanying the pink ownership certificates from the three persons to whom you made the pay-offs, received by your company? A. I don't know.

Q. You don't know anything about it?

A. No.

Q. Would you know whether your file indicated that?

A. If it does, I am positive Counsel has all the file connected with the transaction except the letter of the original transmission to the Department of Motor Vehicles of the pink slips. It is our usual practice not to save those things for any purpose whatsoever. The fact that we pay off, if the company sends the pink slip, the check serves the purpose. We have no reason for keeping merely a form letter, you might say, as usually attached, "We send in return for the money received." There is no point in keeping it.

Q. Now, there was a notice of intention to mortgage this property executed by the petitioner?

A. There was.

Q. You have a copy, or the original with you?

A. I think there is a copy there of the publication.

(Testimony of Charles H. Ahrens.)

Q. And you say that oftentimes you wait before you send the pink ownership certificates to Sacramento?

A. Especially do we do that in the months of February and March. It is necessary, in the State of California, that a motor vehicle registrant send in, I think the first Monday of February, somewhere around the 5th or 6th, he must send in an application for the current year's tax by that date or be fined a substantial figure. In making loans, during that period of time, why, it is common practice to complete them when we obtain the ownership certificate and await the disposition of the Department of Motor Vehicles in Sacramento to send back the current registration before we go through the mechanics of sending up a chattel mortgage and title, because of the fact that it just duplicates the work. We have to do the same thing all the time.

Q. In other words, you wait until you get a batch together and send up?

A. And we also wait for the registration certificates. The usual practice in an office—we all have a way of doing business—in our office, the practice is that every week or ten days we send up all we have acquired that are completed.

Q. That accumulated between the week or ten days period?

A. That is right.

Q. That condition prevailed with respect to this transaction?

A. Beg pardon, sir?

Q. That condition prevailed with respect to this transaction?

A. I would assume so.

Mr. Margolis: I have no further questions, your Honor.

Mr. McLeod: No further questions. [26]

If your Honor please, in view of the fact that Mr. Margolis evidently is going to require more than we can prove by this witness, we would like the matter continued one day if possible.

The Referee: What do you want to prove?

Mr. McLeod: I want to prove the date of mailing, although I think Counsel has done a good job of doing that.

The Referee: Don't you allege the 21st?

Mr. McLeod: We allege the 21st.

The Referee: I am satisfied it was the 21st of March.

Mr. Margolis: I am satisfied it was the 21st of March.

Mr. McLeod: All right. I don't have to produce somebody to prove that.

If I may say a few words, now. The whole thing depends on the delay in recordation. In this instance, we feel it is because of the well-known condition of Sacramento's Motor Vehicle Department, and the further fact, as Mr. Hayner has testified, that the white slips which are required by the Department to be transmitted to them when the mortgage is executed or a transfer made, were in Sacramento. It was an impossibility for the Budget Finance Plan to comply with Section 95 of the Motor Vehicle Act, which requires that a certified copy of the chattel mortgage and the white registration slips be sent.

The Referee: Wasn't that more the fault of the creditors? Wouldn't that be the fault of the Finance Company?

Mr. McLeod: I don't see how it could be the fault of the [27] Finance Company. The Finance Company is helpless because the State was moving very slowly during the Spring period. Those white slips, I don't think even a power gun could get them at that time.

The Referee: Why did they make the loan then?

Mr. McLeod: That, your Honor, I cannot answer.

The Referee: Is it not, therefore, their fault, rather than the fault of the creditors? They cannot pin it on the Motor Vehicle Department, because, under the testimony of the witness, he knew that condition existed, at that time.

Mr. McLeod: Of course, as far as the creditors being made to suffer to any extent by the delay, factually they would not; technically they would not, but actually and factually they would not, of course, because there were liens on these automobiles.

The Referee: We are bound by the law anyway.

Mr. McLeod: I concede that, Your Honor.

The Referee: They were only warned to look out for these other liens, that is true. What about this other situation?

Mr. McLeod: Well, here we have less than 30 days.

The Referee: I can remember cases within ten days.

Mr. McLeod: I know one of fourteen. That was not on an automobile; they did not have Sacramento.

The Referee: I think that is something the Finance Company has to protect itself on, and, under the testimony of this witness, they held them up in batches. I have heard [28] that story before.

Mr. McLeod: I know there is very little I can bring in that you have not heard before.

Mr. Jacoby: May I say this, if Your Honor please, the reason I am speaking myself is because of the remark you made about the Finance Company making the loan under the circumstances. I think Your Honor will have to concede that the Finance Company is in the business of making loans and must do so throughout the year.

The Referee: They must do so at their peril if they don't comply with the law.

Mr. Jacoby: I think the record shows they did comply with the law. I am referring to the letter of the Motor Vehicle Department, that they always do wait for the white slips. They never send the mortgage and the pink before they receive the white slips, because the delay would become undue; the Motor Vehicle Department would say: "We cannot accept, because we still cannot accept because you have not the whites."

The Referee: I don't think that excuses them. I think that makes them more culpable.

Mr. Jacoby: If Your Honor's reasoning is accurate, I say in their defense, a Finance Company, in the present conditions, would be barred from

making an automobile loan between January and April or May. That I know. I know I did not get my registration certificate for two or three months, or my plates for four months. [29]

The Referee: They know that condition. That is why they should be more careful when creditors may become involved. There is your trouble. I think you are just as reprehensible here as you were with reference to the other property. The delay was a little longer there. I see you have over 30 days.

Mr. Jacoby: There is a 30 day delay, but, was that unreasonable when the factual matter is here?

The Referee: I am willing to give Counsel a chance to brief this and show me wherein I can conscientiously do other than I have in mind right now.

Mr. Margolis: I would like to call the Court's attention to one interesting situation here with reference to Claimant's Exhibit No. 4, which I assume is in response to that of March 21st. My inquiry of the witness was what antedated the document of April 17th. It is the fact that was sent on March 21st. Then, they send this letter back that they require the registration card. Now, the transaction was consummated on about February 18th. I would say good conscience would demand that it would be sent up on the 19th or the 20th.

Mr. Jacoby: They cannot complete a transaction because of the Motor Vehicle Department.

The Referee: If they are so anxious to make the loan and want to take the chance, if they don't comply with the law, it strikes me it is their look-out.

Mr. Jacoby: Our thought, talking first legally, if Your Honor please, is that they want to do everything they are [30] obligated to do; they did not complete it. As a matter of fact, in this situation, the estate will gain by the mortgage and the chattels, because of the reason that we cannot deny the delay so far as the machinery and equipment are concerned. They refinanced these loans which were loans made with other institutions. In addition, they gave the bankrupt cash in the sum of \$900. Now, I haven't any intention of criticizing that Your Honor is correct, that the Finance Company cannot lend under these conditions except at its peril, which is what Your Honor's theory would imply. That is going to be a serious condition existing.

The Referee: I have had this here so many times before, particularly on this holding up, sending up in batches. I don't know how many I have declared void since this recordation of chattel mortgages went into effect.

Mr. Jacoby: I would concede Your Honor's point on that, except one thing is material in this situation.

The Referee: It is one of the instances which shows possibly, that is why some of the delay was caused.

Mr. Jacoby: I don't think the record will bear that out, Your Honor, for this reason, the letter from the Motor Vehicle Department shows that at that time papers were sent in and as yet the white slips have not been received.

The Referee: But, it was not sent until after more than 30 days after the transaction was technically closed.

Mr. Jacoby: That is correct, Your Honor, but it was still [31] inoperative so far as the Motor Vehicle Department, because the white slips had not been received, as the record shows.

The Referee: If this company were some individual, not used to doing business, there might be something said about the reasonableness. Here is a company doing this constantly and knows that these conditions come up.

Mr. Jacoby: I think there, Your Honor, the answer works either way around.

The Referee: I don't think so. I think it is just the reverse.

Mr. Jacoby: Well, the company does business and knows the Department of Motor Vehicles will not accept incomplete papers, that is papers without the white slips, actually, because of their experience they would be bound to wait until they get the white slips or the Department comes back and says: "Your record is not complete."

The Referee: They went ahead on this loan, between the time, apparently, without any regard for the law, at least the law made by the decisions. I am willing, if you can give me cases, I am not going to shut you off.

Mr. Jacoby: We will appreciate that opportunity, Your Honor.

The Referee: How many days do you want? I don't want too long, because I am going away on the 1st. I will give you 2-2-1.

(Submitted 2-2-1.) [32]

[Endorsed]: No. 11856. United States Circuit Court of Appeals for the Ninth Circuit. Budget Finance Plan, Inc., a corporation, Appellant, vs. John O. England, etc., Trustee of Estate of Buddie Jerome Hayner, bankrupt, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed February 13, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
Ninth Judicial Circuit

No. 11856

In the Matter of
BUDDIE JEROME HAYNER,
Bankrupt.

STATEMENT OF POINTS ON APPEAL AND
A DESIGNATION OF RECORD ON
APPEAL

Appellant, Budget Finance Plan, a corporation, hereby adopts as its points on appeal its statement of points on appeal appearing in the transcript of the record herein, and appellant intends to rely on said points on appeal.

Appellant designates for printing the entire transcript as certified to the above Court on appeal from the District Court, Southern Division, Northern District of California.

Dated this 20th day of February, 1948.

/s/ CARROLL F. JACOBY,
Attorney for Budget Finance Plan, a Corporation,
Appellant.

[Affidavit of service by mail attached.]

[Endorsed]: Filed Feb. 20, 1948.

[Title of Circuit Court of Appeals and Cause.]

APPLICATION AND ORDER FOR TRANSMISSION OF EXHIBITS WITHOUT REPRODUCTION

Appellant moves the above entitled Court that Exhibits 1, 2, 3 and 4, herein be considered in their usual form and without the necessity of reproduction upon the ground that the said exhibits are substantially referred to in the transcript of record and that therefore said exhibits are, in said original form, of material but limited importance on appeal.

Dated this 24th day of February, 1948.

/s/ CARROLL F. JACOBY,
Attorney for Appellant.

ORDER

It Is Hereby Ordered that Exhibits 1, 2, 3 and 4 herein be considered by this Court in their usual and original form without the necessity of reproduction.

Dated this 26th day of February, 1948.

/s/ FRANCIS A. GARRECHT,
Judge of the United States
Circuit Court.

[Endorsed]: Filed Feb. 25, 1948.